A SHORT INTRODUCTION TO MORAL PHILOSOPHY,

IN THREE BOOKS;

CONTAINING THE

ELEMENTS OF ETHICS

AND THE

LAW OF NATURE.

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AN INTRODUCTION TO MORAL PHILOSOPHY.

BOOK II.

ELEMENTS OF THE LAW OF NATURE.

CHAP. IX.

Of CONTRACTS *in* GENERAL.

SINCE a perpetual commerce and mutual aids are abſolutely neceſſary for the ſubſiſtence of mankind, not to ſpeak of the conveniencies of life, God has indued men, not only with reaſon, but the powers of ſpeech; by which we can make known to others our ſentiments, deſires, affections, deſigns, and purpoſes. For the right uſe of this faculty we have alſo a ſublime ſenſe implanted, naturally ſtrengthened by our keen deſires of knowledge, by which we naturally approve veracity, ſincerity, and fidelity; and hate falſhood, diſſimulation, and deceit. Veracity and faith in our engagments, beſide their own immediate beau-

ty thus approved, recommend themſelves to the a probation and choice of every wiſe and honeſt man their manifeſt neceſſity for the common intereſt a ſafety; as lies and falſhood are alſo manifeſtly deſtr tive in ſociety.

In an intercourſe of ſervices, in commerce, and joint labour, our ſentiments, inclinations and deſi muſt be mutually made known: and "when we affi "to others that we will pay or perform any thi "with that profeſſed view, that another ſhall pay "perform ſomething on his part," then we are f to promiſe or contract. A covenant, or contract, is "conſent of two or more to certain terms, wit "view to conſtitute or aboliſh ſome obligation." does the law of nature diſtinguiſh between * *contra* and *pactions*.

Contracts are of abſolute neceſſity in life, and is the maintaining of faith in them. The moſt we thy muſt need the goods and labours of the poor, ought they to expect them gratuitouſly. There m be conferences and bargains about them, that the pa ties may agree about their mutual performances. Su poſe all men as juſt and good as one could deſire, n ready for all kind offices: yet without contracts man can depend upon the aſſiſtance of others. F when I need the aid of a neighbour, he may be e gaged in ſome more important ſervices to a third pe

* The difference between *contractus* and *pactum* is fou in any Civil-law-dictionary.

CHAP. VIII.

The METHODS *of* TRANSFERRING PROPERTY, CONTRACTS, SUCCESSION, TESTAMENTS.

PROPERTY may be transferred, either by the *voluntary deed* of the former proprietor, or without any deed of his, by *appointment of law*, either natural or civil: and in each of these ways it is transferred either *among the living*, or upon *the event of death*.

By the deed of the proprietor among the living, property is transferred either *gratuitously* in donations; or for *valuable consideration* in commerce, wherein a price, or goods of equal value, or rights, are transferred in consideration of it. This power of alienating, we formerly shewed, is included in the right of property. We treat of contracts and commerce hereafter.

II. By the deed of the proprietor upon the event of death, property is transferred in *testaments* or *last-wills*. According to the law of nature "any declaration of a man's will how his goods should be disposed of upon the event of his death," is a valid testament; provided there be sufficient documents or proof made of this will. For that of which no proof can be made, must be deemed as if it were not.

The nature of property itself, and the known in-

tention of mankind in their acquiring goods beyon nea
heir own uſe, that they may contribute to the hap for
Pineſs of ſuch as are deareſt to them, ſhew that th ce
wills of the deceaſed which contain nothing iniquito cont
ſhould be obſerved. 'Tis cruel and inhumane, and d of na
ſtructive to induſtry to hinder men to transfer as th in v
incline what they have acquired by their innocent l an
bours, and that upon any contingency. It would s and
diſagreeable and often highly inconvenient to obl ries
men while they are living, and perhaps in good healneceſ
to make irrevocable conveyances of their property l. P
their kinſmen: It would alſo be cruel to deprive t again
dying of this ſatisfaction that their acquiſitions ſhow, fo
be of advantage to their friends: It would be inhtrict
mane toward the ſurviving friends, the heirs or legh wi
tees, to fruſtrate or intercept the kindneſſes intendcts,
them by the deceaſed. Without regard therefore njur
the metaphyſical ſubtilities of ſuch as object, that *inſecu*
abſurd men ſhould then be deemed to will and ion t
when they become incapable of will or action, we coetor
clude that the law of nature grants this power of *dons*
poſing by will. are

But as many obligations both of a perfect kinoſt
and ſuch as are pretty near of equal ſanctity, mroſit
be diſcharged out of our goods, all juſt debts muſt int
paid, our children, or indigent parents maintain the
wills are therefore juſtly made void as far as they ma
terfere with theſe obligations. Nay though there w
no ſurviving parents or children, it is reaſonable t

or near indigent kinſmen, who have given no juſt
ha for their being thus neglected, ſhould be admit-
th certain ſhares of the fortune of the deceaſed,
to contrary to an inhumane capricious will. The
l of nature too as well as civil laws invalidate any
th in wills which may be detrimental to the commu-
nt l and enjoin that wills be made with ſuch ſolemn
ld ; and circumſtances as may be neceſſary to prevent
obl ries : and, where theſe forms are omitted with-
eal neceſſity, deems the will to be void.

rty I. PROPERTY is transferred *among the living*,
ve against the will of the proprietor, by appointment
ſhow, for the performance of whatever the proprietor
in ſtrictly bound to perform, and yet declined. This
r leg will be more fully explained when we treat of
tend cts, and the rights ariſing from damage done ei-
for njuriouſly or without a crime, and the manner
at *in*ſecuting our juſt rights.*

nd ion *the event of death*, without any deed of the
ve ceetor, property is transferred *by the law* in the
of *tions to the inteſtate*. The natural grounds of
are theſe : it is well known that the intention
t kinoſt all mens acquiſitions beyond their own uſe,
y, mroſit thoſe whom they love. This univerſally
muſt intention of mankind is a continual declara-
ntain their will : now according to the general tem-
they mankind, our children and near kinſmen are
ere w
able t

* Chap. xv. of this book.

deareſt to us, and 'tis for them we univerſally en
vour to obtain not only the neceſſary ſupports,
even the pleaſures and ornaments of life. Nay
and nature, by making theſe ties of blood bond
ſo of love and good-will, ſeems to have given our
dren and kinſmen if not a perfect claim or right
at leaſt one very near to perfect, to obtain not
the neceſſary ſupports, but even the convenienc
life from their wealthy parents or kinſmen, unleſs
have forfeited it by their vitious behaviour.
therefore cruel to deprive men of this general c
lation upon the event of ſudden death, againſt w
no man can take certain precautions, that the fru
their induſtry ſhall fall to their children or kin
And it is plainly cruel and unjuſt to defeat theſe
of children and kinſmen which God and nature
given them.

Nay where the cuſtom has prevailed of adm
children and kinſmen to ſucceed; it is juſtly pr
ed that this was the very intention of the dec
And this right of ſucceſſion has the ſame found
in juſtice with teſtaments.

Where there are no children or very near
tions, like arguments of humanity would plea
friends, if it were known that any ſuch had be
gularly dear to the deceaſed. But where by c
or law the remoteſt kinſmen are preferred to fri
it is preſumable that this was the intention of th
ſon deceaſed, unleſs proof can be made of his

or in ſome ſervices to thoſe who can give him
ecompenſe more requiſite in his affairs.

The ſacred obligation of faith in contracts appears,
only from our immediate ſenſe of its beauty, and
the deformity of the contrary, but from the miſ-
efs which muſt enſue upon violating it. It is plain-
nore contrary to the ſocial nature, and frequently
ıfer injury, to break our faith, than in other equal
umſtances to have omitted or declined a duty we
another way. By violating our faith we may
e defeat the deſigns of ſuch as truſted to our in-
ity, and might have otherwiſe obtained the aid
wanted: and, from the neceſſity of commerce, it
appear, that the rights founded on contracts are
he *perfect* ſort, to be purſued even by force. The
dious for his part breaks off all ſocial commerce
ng men.

1. And further; tho' a good man would not take
dvantage of another's weakneſs or ignorance in
ealings, nay would frequently free another from
gain which proved highly inconvenient to him,
not very neceſſary to himſelf, provided any loſs
ıſtained were made good; yet there is ſuch a ma-
neceſſity of maintaining faith in commerce, and
xcluding the cavils which might be made from
ſmaller inconveniences to one or other of the
s, that in the proper matters of commerce, the
iſtration of which the law of nature commits to
prudence, our convenants tho' raſhly made muſt

be valid, and constitute at least such external rig
others, as must for the common utility be maint
though perhaps a good man would not insist on
But if the person who claims them persists in his
to the utmost, we can have no right to oppose
violently; but ought to observe our covenant
cording to an old rule, that "what ought not to
"been done, yet in many cases when done is
"gatory."

The proper *matters of commerce* are our l
and goods, or in general, all such things as m
frequently interchanged among men for the inte
society; and by a commerce in which we neith
rectly violate that pious reverence due to God, n
perfect right of another; and about which no
law of God deprives us of the right of transacting

III. We must distinguish from contracts *th*
declarations of our future intentions; which
transfer any right to others nor bind us to conti
the same purpose. What come nearer to contra
these *imperfect promises*, in which from custo
understood, that we convey no right to others
blige us to performance, but only bind ourselves
nour and veracity; and that too only upon con
that the person to whom we make such prom
behave as to be worthy of the favour designed h
do not by his bad conduct give us just cause of
our intentions: and in this point the promiser
to himself the right of judging; nor does he bri

elf under an higher perfect obligation, than that of ompenſating any loſs the other may ſuſtain, even tho' e ſhould without cauſe alter his purpoſe.

IV. The circumſtances to be conſidered in explain- g the nature of contracts and the juſt exceptions a- ainſt their obligation, relate either to the *underſtand- g*, or the *will*, the two internal principles of action, the *matter* about which they are made.

As to the *underſtanding;* the common intereſt, as ell as humanity, requires, that no perſon ſhould ſuf- in any damage on account of any ignorance in his vn affairs which is no way faulty. And hence the ntracts of minors unacquainted with the nature of e buſineſs, are not obligatory; nor of thoſe ſeized th madneſs or dotage, nor of ideots, nor even of men te diſordered by drunkenneſs ſo as to have loſt the of their reaſon. And altho' there may be a great me in drunkenneſs which may juſtly be puniſhed; this is no reaſon why the fraudulent and covetous uld be allowed to make a prey of them. The caſe very different as to crimes or injuries done by men oxicated. For though we are not bound with reſpect others to preſerve ourſelves always in a condition fit tranſacting of buſineſs, yet we are bound to preſerve ſelves innocent continually, and to avoid doing in- es. If one of the parties was not aware that the er was intoxicated; this latter will be bound to make d any loſs the other ſuſtained by his nonperfor- ce of the contract. But there are many degrees

of intoxication, ſome of which though they may ab
our caution and prudence, yet don't deprive us of
neceſſary uſe of reaſon. If all theſe degrees alſo m
contracts void, there could be no ſure tranſactions
mong men. Queſtions concerning theſe degrees, m
be decided in the ſeveral caſes by the judgment
prudent arbitrators.

The ſame might be ſaid concerning the im
dence of youth, previous to civil laws: ſince the
gree of prudence requiſite for commerce appears
different perſons at very different ages. That th
fore commerce may be aſcertained, and ſuch en
evaſions prevented, 'tis abſolutely neceſſary that
very ſociety ſome certain age be agreed upon, to w
whoſoever attains muſt be deemed his own maſter,
capable of managing his own buſineſs. This age
be determined with this view, that as few as po
of ripe judgment be excluded from the adminiſtra
of their own affairs, and yet as few as poſſible ad
ted before the maturity of judgment. The me
fixed by the Roman law is as good as any; that
nors before fourteen years of age in males, and tw
in females, ſhould have no management of their
fairs, but be under the natural guardianſhip of
parents; or, if they are dead, under that of the g
dians their parents or the law has appointed: an
ter theſe years, till twenty-one, or as it was in
earlier times, till twenty-five, they ſhould be ſo
jected to curators, that no deed of theirs intend

ind themſelves or their fortunes, ſhould be deemed alid without the conſent of their curators.

It is on one hand injuſt that minors ſhould ſuſtain oſſes in contracts; but it is on the other hand injuſt hat they ſhould be enriched at the expence of others. herefore any contract has been made with them, nd ſomething paid or performed by the other party, it is not detrimental to them to confirm the contract, ey ought to do it when they come to maturity: if it e found detrimental, they ſhould reſtore or compenate what was received on that account, or as far as ey were profited. Minors before the legal years often have ſufficient judgment in certain matters; and when it is ſo, nor was there any thing fraudulent or ulty on the other ſide, they are bound before God nd their own conſciences by their contracts, even as e adult.

When parents or curators are at hand, one can arce without a groſs fault enter into any important ntracts with a minor without their conſent. As gerally the paſſions of the young are impetuous and autious; they are raſh in promiſing, keen in their ires, improvident, liberal, full of hopes and void of ſuſpicion.

V. He who was engaged into a contract by any ſtake or error about the very nature of the object or ods, or theſe qualities which are chiefly regarded in m, is not bound: and whatever he has paid on that count ſhould be reſtored. But no man has this plea

who was engaged only by a ſecret expectation of ſu
qualities as he did not openly inſiſt on, or of ſuch
are not commonly expected in ſuch goods. If
miſtake was about ſome different matter or eve
which moved him to the bargain; when the miſt
is diſcovered, humanity may require it of the o
party to ſet him free, eſpecially if he is ready to c
penſate any damage occaſioned by his miſtake.
this is not a matter of perfect obligation, unleſs
perſon in the miſtake made it an expreſs conditio
the bargain.

The nature of the goods, and the qualities u
which their value depends, and the defects of ſuch q
lities, are, as they ſpeak, *eſſential points* in contr
Where one of the parties has been in a miſtake a
them he is not bound. Where the miſtake has
only about the current price; the perſon deceived
ſuſtaining the loſs has a perfect right to have the
reduced to equality; which if the other party re
the bargain may be made void.

Whoever by any fault or raſhneſs of his cauſe
miſtake of the other party, or fell into a miſtake
ſelf, is bound to compenſate any loſs the other t
by ſuſtains: but he that dealt fraudulently, is b
further to make good any profit the other could
made, had the bargain been executed with integr

* The Civilians thus diſtinguiſh between *penſare da*
and *praeſtare quod intereſt*: obliging thoſe who wrong
through negligence or inadvertence to the former onl

Any promiſes or contracts obtained from us by the fraud of the perſon with whom we contracted, are plainly void; becauſe through his fraud we wanted the due knowledge requiſite in contracting, and he is bound to compenſate our damage occaſioned by his fraud, which is eaſieſt done by making the bargain void.

Where the fraud of a third perſon has moved us to a contract without any colluſion with the other party; the bargain is valid. But we have a right of demanding compenſation of any loſs from that third perſon who deceived us.

VI. We always deem that all ſuch voluntary conſent who voluntarily uſe ſuch ſigns of conſenting as by uſtom import it. Nor could there be any faith maintained, if we allowed exceptions from a ſecret diſſent contrary to our expreſſions.

Words and writing are the fitteſt methods of declaring conſent: but any other ſign agreed upon by the parties, or received by common cuſtom is ſufficient. May ſome actions in certain circumſtances are juſtly deemed to declare conſent, when they are ſuch as no man of common ſenſe or equity would do, unleſs he alſo conſented to certain terms. From ſuch actions therefore we juſtly conclude a perſon's conſent, unleſs he timeouſly premoniſh all concerned of the contrary. Covenants or contracts founded on conſent thus de-

caſe of fraud or more groſs negligence obliging always to the latter.

clared are called *tacit*: which are distinguished fr
another set of obligations, to be presently explain
said to arise † *after the manner of contracts*, by t
that in tacit contracts the obligation is prevented
an express declaration to the contrary; but not in
others.

Beside the principal expressed articles in contra
there are frequently others plainly understood as
jected from the very nature of the transaction, or f
the prevailing custom among all who are engage
such business.

The consent of both parties, of the receiver
well as the giver, is necessary in all translation e
of property or any other rights, whether gratuito
not. For from one's intention of bestowing any t
on a friend, we cannot conclude any design of th
ing it away in case he don't accept, or of forci
upon him. But a lower sort of evidence will ser
prove a consent to accept any thing valuable; an
may always presume upon it, if the thing was p
ously requested; provided the offer answer the
quest.

But as in full property there's included a rig
disposing under any lawful conditions, or upon
contingency; and of giving in trust to a friend,
some future event happens: inheritances and leg
may thus be left with trustees, till it be found wh
the heirs designed, or the legatees are willing t

† Chap. xiv.

cept. Nay goods may thus be kept in favours of persons not yet exiſting; as it is injuſt to hinder the proprietor to appoint his goods thus to be reſerved for the offspring of his friends if they ſhall happen to have any: and 'tis injurious toward ſuch offspring to have defeated or intercepted any benefits deſtined for them by their deceaſed parents, kinſmen, or friends. And yet no heir or legatee can be forced to be proprietor of any thing thus left to him without his own conſent. Mankind however, and each one as he has opportunity, when no ſpecial truſtee is appointed, ought to take this care of infants, or perſons unborn, to preſerve ſuch inheritances or legacies for their behoof, till they can accept them.

VII. As the obligation of contracts plainly depends on the conſent of the parties, and without it is void; ſo when it was only given under certain conditions, if they don't exiſt, there's no obligation. But ſuch conditions muſt be known as ſuch on both ſides, otherwiſe there could be no faith in our tranſactions. Theſe conditions therefore alone are of ſuch force as that their non-exiſtence makes the tranſaction void, which were either expreſsly made conditions by one or other of the parties, or which the perſon who inſiſts on them did in conſcience believe the other party underſtood as adjected from the nature of the affair; and not every one which one of the parties might ſecretly expect would exiſt, tho' the like is not ordinarily expected in ſuch tranſactions. Whatever indeed one party has un-

dertaken for to the other, or positively affirme[d] him to engage him to the bargain, *that* the other p[ro]may justly be deemed to have made a condition o[f] consenting.

In the known division of contracts into *absolut[e]* *conditional*, by a condition is understood "some e[v]"yet uncertain to one or both the parties, di[f]"from the prestations covenanted, upon the exi[st]"of which the validity of the contract depends." condition known to be naturally impossible, shew[s] there's no engagement. We shall presently spe[ak] another sort of impossibility from the prohibitio[n] law, or moral turpitude. But a vitious action o[f] third person, to be done without any aid of the[m] ties contracting, may be a just condition; pro[vi]nothing in the contract give any invitation to [its] actions.

Conditions in the power of either party are [one] *voluntary;* others are *involuntary;* and some a[re] a mixed nature. But neither side is understood [to] obliged to make these conditions called voluntar[y] mixed to exist, † for then they would be absolute venants of the bargain.

VIII. The due freedom of consent may be

† A voluntary condition is of this sort: "If I shall "to live in the country, I agree to set my city-house at "a rent." By this I don't bind myself to live in the try. "I promise, if I incline to sell certain lands, that "man shall have them at a certain price."

ay by fear. But of this there are two ſorts, one
oting a ſuſpicion that when one party has fulfilled
part of the bargain, the other party won't fulfil his:
other denotes a terror occaſioned by ſome great
l threatened. As to the former ſort theſe obſerva-
ns ſeem juſt: 1. He that voluntarily contracts with
enly injuſt and impious men, whoſe characters he
viouſly knew, is plainly obliged by his contract, as
muſt have tacitly renounced any exception from
ir character, which was previouſly known. But
ly. If he only comes to the knowledge of their cha-
ters after the contract, 'tis not indeed void; but he
y juſtly delay performing on his part, till they give
h ſecurity for the performance of theirs as a wiſe
piter judges ſufficient. To maintain that all con-
cts entered into with the injuſt, or heretical or im-
us, are void, would deſtroy all faith among men;
ce there are no ſuch obvious characteriſtics to di-
anguiſh the good from the bad as all will agree in:
d conſidering the weakneſſes of mankind, they have
ays had the moſt oppoſite opinions about the moral
el religious characters of men around them; as in all
s there have been the greateſt diverſities and con-
trieties of opinions.

As to the ſecond ſort of fear; when I have been
ed into a contract by fear of evil threatened; there
two caſes, according as the evil is unjuſtly threa-
d either by him I contract with, or by a third per-
without any colluſion with the perſon I contract

with. In the latter case when by contract I obta
aid of an innocent man against dangers threaten
another, no doubt I am bound; unless there be
thing very exorbitant in the terms. For the givi
in such perils is no doubt a most useful service w
serving compensation.

If indeed I am threatened unjustly with some
evil by any man unless I enter into a certain b
or make a promise to a third person, who is
collusion with him who threatens me, while ye
forced to conceal from him the terror I am unde
bargain or promise is void, because by this terro
deprived of that liberty which is necessary in
merce. But any damage this innocent person
by the disappointment, I am bound to make it
as it was occasioned by me for my own safety.
same holds, when through my cowardice I hav
excessively afraid without cause.

Any contracts entered into from fear of a j
gistrate, or the sentence of a judge, are plainly
since we are deemed subjected to such civil pow

IX. But when I am forced to contract t
fear of evils unjustly threatened by the very
contract with, we must distinguish whether the
are threatened under some such plausible shew
as might possibly impose upon an honest man,
the other hand, by openly avowed injustice,
any such shadow of right. In the former case,
the author of such violence acquires no right

ch he can uſe with a good conſcience; yet on ac-
nt of ſome more diſtant intereſts of mankind, he
y have a ſort of *external right*, with which the
ier party may be bound to comply. Nothing is
re incident to mankind than to miſtake about their
its; and hence ariſe wars too frequently, while yet
ther ſide is ſenſible of the injuſtice of their cauſe.
eſe wars muſt either be compoſed by treaties and
s tracts, or muſt end with the ruin of one ſide. Now
yet highly eligible that they ſhould be ended rather by
one treaty: and treaties could be of no uſe if they
ro lay open to this exception of injuſt force, which
inter ſide might plead whenſoever they inclined to
n ſew the old controverſy. This exception therefore
itſt not be allowed againſt treaties of peace, when
y. re were any plauſible pretences on both ſides for
naw preceding war. If indeed the terms of peace are
nifeſtly iniquitous and oppreſſive, contrary to all
a jmanity, making life quite miſerable and ſlaviſh to
nly leſs fortunate ſide; ſuch treaties have no plauſible
owws of juſtice, and lie open to the exception *.

t tBut where violence is uſed or threatened, without
ry pretence of right, to extort promiſes or contracts,
they cannot be obligatory. By ſuch violence the au-
ew or of it plainly abdicates or forfeits all the rights
an, nen; all the benefits to be claimed from the law of
ce, ure, or the humanity of his fellows; as he openly
ſe,
righ

* See Book II. Ch. xv. 8. and Book III. Ch. vii. 8. 9.

profeſſes himſelf a common enemy to all, fr
any ſocial tie. The common ſafety therefore
that ſuch monſters ſhould be cut off by any
Suppoſe that ſuch extorted promiſes were va
whatever upon ſuch a promiſe is due to the a
the violence, he is always indebted at leaſt as
the perſon thus compelled, upon account of
done him injuſtly: theſe two claims therefor
guiſh each other by *compenſation*. Nor can
allege that by the act of promiſing under th
the promiſer tacitly renounces this exception
force previouſly known; for this forced renu
alleged is one part of the damage: and what
is there of alleging an obligation by tacit com
one who in ſuch a cauſe is incapable of acq
right by the moſt expreſs contract, and who
very affair abdicates or forfeits all human righ

But, however that no regard is to be had
perſons in thus trampling upon all the rights
kind, yet when they ſufficiently appear to be
ing to a ſoberer mind, aſking pardon of wha
offering to quit their faſtneſſes, to deliver the
and to give ſecurity for their future condu
when ſuch confederacies cannot be otherwiſe
ed without ſhedding much innocent blood of
zens; the common intereſt may ſometimes re
enter into ſuch treaties with them, and to
them faithfully: and as to any of our citizens
this means are excluded from proſecuting the

on of damages, they ought to obtain it from the unity.

CONTRACTS or promiſes cannot be of force the matter of them be *poſſible* to the parties: herefore no man can be obliged to * what he can- compliſh tho' he ſeriouſly deſired it. If one has fed any thing, which by ſome ſubſequent acci- without his fault becomes impoſſible, he is only d to reſtore or compenſate the value of any thing ceived in conſideration of it. Where the fraud ier groſs fault of one party either made the mat- poſſible, or concealed the impoſſibility, he is o- to make good ‡ the profit which would other- ave ariſen to the other.

he matter of contracts muſt alſo be lawful: that r contracts or promiſes ſhould be only about the l matters of commerce, which can be alienated, dminiſtration of which is committed to human s nce, and not prohibited by any ſpecial law. No tion therefore can ariſe from any promiſe, to e directly the reverence due to God, or the per- ights of others, or to do what any ſpecial law its, or what is not committed to our power.

If therefore both parties know the unlawful- of the terms of any contract, or ought to have n it; the contract is void. The one who em- another to commit a crime, may redemand what

* Book II. Ch. iii. 2. ‡ *Praeſtare quod intereſt.*

he gave to the perſon hired, before he has co with th
the crime. And if the crime be previouſly com fraudu
the executor ought not to have the hire; n all the
previouſly received it, can the perſon who hi ul perf
redemand it. Both equally deſerve the highe d other
ments; nor ſhould either hold any advantage enſate t
engagements. I. Ev

If after the contract the iniquity of it ap rs does
either ſide, which they had not formerly con r of tr
before execution either of them may free hims ith oth
it: and any reward given ſhould be reſtored y the
after execution can the perſon employed claim h as g
ward, unleſs the moral turpitude affect only t for a c
and not himſelf; or unleſs his ignorance was his con
culpable. But where the turpitude only aff one ha
perſon who employed him, then he may juſtl *right* a
his hire. 'Tis the general intereſt of mank *real* r
there ſhould be no allurements to ſuch crimes, r contr
pendence upon ſuch contracts. ght tho

But if the vice in any performance of coven cted fr
conſiſt in this, that a man has managed impr ct; th
and contrary to the duty of a diſcreet cautio f natur
in theſe matters which naturally fall under com plainly
'tis of ſuch importance to maintain the faith s of h
merce, that in this caſe too, "our tranſacti th part
"covenants are obligatory, though we were f two co
"entering into them." , the l

Covenants about the goods or actions o
which are not ſubjected to our power, are in t

with thoſe about impoſſibilities. Whoever has fraudulently in ſuch covenants is liable to make all the profit which would have accrued from the ul performance of them: and he who has de- d others by any culpable negligence is obliged to enſate the damages.

I. EVERY ſort of contracts about one's goods or rs does not immediately diveſt him of all moral r of tranſacting about them in a different man- with others. This is the caſe only in ſuch as y the entire property at once, or a real right; ch as give another the whole right to one's la- for a certain time, or during life, ſo as to pre- his contracting with others about the ſame. But one has only made a contract conſtituting a *per- right* againſt himſelf, he may thereafter convey a *real* right, to ſuch as knew nothing about the r contract, which will take place of the perſo- ght tho' prior. Where indeed this new grantee acted fraudulently, being apprized of the former act; the ſubſequent one ſhould be void. For the f nature can never confirm frauds, or any * con- plainly contrived and deſigned to elude any obli- s of humanity, when this deſign muſt be known th parties in the contract. But in other caſes, two covenants entered into with the ſame per- , the latter derogates from the former." But of

* Matth xv. 5. Mark vii. 11.

contracts entered into about the ſame thing w
ferent perſons, " ſuch as convey a real right t
" of thoſe which only convey a perſonal;"
there has been no fraud on his part to whom
right is transferred. And laſtly in contracts of
nature entered into with different perſons, "
" takes place of the poſterior."

XII. We may contract by *factors* or *ag*
perſons commiſſioned for that purpoſe, as w
our own perſons. Where full powers are gi
no ſpecial inſtructions to be ſhewn to all he de
expreſſing the extent of our agent's commiſſi
how far we ſubject our rights to his tranſactio
are deemed to be obliged to ratify what he doe
name, unleſs we can make proof that he act
dulently, or was bribed by the other party;
manifeſt iniquity of his deeds ſatisfy a prudent
that he muſt have been corrupted. As to any
injuries we ſuſtain, we muſt impute them to ou
while we ratify what he has done with others.

But when the powers of the agent are ſpeci
clared to all concerned, what he tranſacts beyo
bounds does not oblige his conſtituent.

CHAP. X.

Our Obligations in Speech.

OUR duties in the uſe of ſpeech have a near affi-
nity to thoſe in contracts. Mankind enjoy this
minence above other animals, that they have the
ers of reaſon and ſpeech, by which chiefly a ſocial
commerce, and an intercourſe of kind offices are
tained. It is in general plain that we are bound
ſe theſe excellent gifts of God in ſuch manner as
oſt conducive to the general good, and ſuitable to
everal obligations in life.

this important matter we have very manifeſt
ations of what God requires of us, in the very
ture of our nature: an immediate ſenſe ſeems to
nmend that uſe of ſpeech which the common in-
requires. In our tender years we are naturally
to diſcover candidly all we know. We have a
al averſion to all falſhood and diſſimulation, un-
experience ſome inconveniency from this open-
of heart, which we at firſt approve. Reflection, a
d to the common good, and a prudent care of
wn ſafety, will often perſuade us to conceal or
ent about certain things; and to reſtrain the firſt
ſe of our mind. But when we reſolve to ſpeak
ers, then both the immediate ſenſe of our hearts,
rational regard to the common intereſt, will re-

commend and enjoin upon us the ſteddy rule or pu
poſe, of ſpeaking nothing contrary to the ſentimen
of our heart, or which will deceive others. Th
are our natural ſentiments whether we are judging
our own conduct or that of others.

For as a great ſhare of the moſt uſeful knowle
in the affairs of life, as well as that of a more ſpe
lative kind, is acquired from the converſation of oth
who are under no ſpecial obligations of communic
ing to us their ſentiments; this advantage of a ſo
life, not to mention the pleaſures of converſation w
mutual confidence, muſt be entirely loſt, unleſs m
maintain truth and fidelity in all their diſcourſe w
each other.

What we ſay of ſpeech holds alſo concerning
ther ſigns uſed for the ſame purpoſe of communi
ing our ſentiments, viz. common writing, or hi
glyphics.

II. We muſt alſo obſerve here that there is a t
fold uſe of ſigns, whether natural, or artificial
inſtituted: * one in which the perſon who cauſes
appearance is never imagined to make any profe
or to have any intention of communicating his ſe
ments to others. The ſpectator according to his
ſagacity concludes from the appearances ſome fa
other, without imagining that the perſon who o
ſioned theſe appearances did it with a view to give

* See Grotius de Jure Belli, &c. L. III. 1. 8.

information. The other uſe of ſigns is of ſuch nature that it plainly contains this profeſſion, or gives the obſerver juſt ground to conclude that ſuch ſigns were made deſignedly to intimate ſomething to him.

In the former way of making ſigns, there is no peculiar obligation: we are only under that obligation common to all parts of life, to do no hurt to our neighbour without a juſt cauſe. But when there is juſt cauſe, as in the caſe of a juſt war, we may without blame uſe ſuch arts of deceiving, which are called *ſtratagems*. Nay provided we do no hurt to any innocent perſon, there's no crime in deceiving * by ſuch ſort of ſigns our very beſt friends.

But we are under very different obligations as to the other uſe of ſigns. For without preſuppoſing any formal covenant or formal expreſs agreement, the very uſe of ſigns in certain circumſtances may plainly contain the nature of a *tacit convention*, and he who exhibits them is juſtly underſtood to covenant with the hearer to communicate his ſentiments, according to that interpretation of theſe ſigns which is either natural or cuſtomary, unleſs there be ſome ſpecial reaſon in ‡ the

* Thus an army intending to decamp in the night, yet keep all their fires burning in the old places to conceal their motions. A ſtudious man to avoid interruption, keeps his doors ſhut, and his ſtreet-windows darkened, whence we conclude that he is abroad.

‡ A cypher agreed upon, for inſtance.

caſe, known on both ſides, why we ſhould depart from the ordinary interpretation. For did we not universally underſtand ſuch an agreement as to ſpeech, it would be a ridiculous action either to addreſs ſpeech to another or to liſten to it. And the ſame holds as to other ſigns ‡ natural or inſtituted, uſed in the ſame manner.

Theſe therefore are the laws of ſpeech and hearing. 1. "Where others have a right to know the whole ſentiments of the ſpeaker, he is obliged not only to ſpeak truth but to reveal the whole truth." This holds as to witneſſes in courts of juſtice, and ſuch as have engaged to communicate the whole myſteries of any art.

The ſecond law is, "Though others may have a peculiar right to know our ſentiments, yet when we ſpeak to them, we ſhould ſay nothing but what agrees with our ſentiments according to the common interpretation which obtains among men of underſtanding." One is therefore guilty of falſehood or lying who ſpeaks what is thus contrary to his ſentiments, although by ſome unuſual way of interpreting the words, or by ſome mental reſervation, it may agree with them. If ſuch arts were allowed, all would be opened to all deceit and fraud.

III. That our duty in this point may be

‡ Thus ſending wings or ſpurs to a friend at court, intimates to him that we imagine he is in danger, and could this profeſſion.

ppear, we muſt obſerve, 1. That all ſigns, eſpecially ords ſhould be uſed in the cuſtomary manner, with- t regard to antient obſolete meanings or etymo- gies. Expreſſions of civility and courteſy, or titles f honour, deceive no body. They are known not ſignify what the ſame words do on other occaſions.

2. If it is known to all concerned that in ſome fairs certain perſons are allowed to deceive; nor es the perſon deceived, when he comes to diſcover complain of it as an injury; what artifice or falſe- eaking is uſed in theſe affairs is not deemed crimi- l. This is the caſe in many diverſions; and ſome- mes in ſerious buſineſs, when we commit ourſelves tirely to the conduct of others, in whoſe wiſdom d fidelity we confide; as patients do to phyſicians, d ſoldiers to their commanders in chief.

3. Nay if the cuſtom has prevailed in war, that emies deceive each other by falſe narrations when ey can, nor do the deceived complain of it as a olation of the laws of civilized nations: one may dge that by a new tacit convention enemies have mitted to each other that right otherwiſe founded the general convention contained in the addreſ- g of ſpeech to others. But a candid mind would t without the moſt urgent cauſes uſe ſuch me- ods, ſince they have a ſtrong appearance of moral rpitude.

4. But the deceiving of enemies by any pretence of treaty or covenant, never was nor can be allowed,

As it is by treaties alone that we can maintain
more humane methods of carrying on war, and
vent the moſt ſavage cruelties; or reſtore peace a
without the deſtruction of one ſide, or reducing t
to miſerable ſlavery.

5. But this obligation about ſpeech, as all ot
founded in tacit conventions may be prevented
taken away, by a * timely premonition of all
cerned.

6. Beſide the above-mentioned exception of i
force in matters of contracts, ſome plead for an
exception from ſome grievous and extraordinary
ceſſities; when without falſe-ſpeaking we cannot
ſerve the innocent, or the moſt worthy perhaps of
kind, or even a whole nation, from ruin. What
force there is in this exception, it is plain it is
peculiar to this ſubject; ſince it ſeems, as we
† hereafter ſhew, that this exception takes pla
moſt of the other ſpecial laws of nature.

7. Where men with malicious intentions, and
out having any right to demand it, are endeavo
to diſcover a perſon's ſentiments by captious an
ſidious queſtions; when even his ſilence would d
ver all they want to his ruin: if there occur to
ſuch anſwers as to good unprejudiced men would
a true ſignification according to his ſentiments,
yet they will appear to theſe inſidious enemies t

* See the preceeding chap. § 6.

† Chapter xvi. of this book.

nify ſomething very different; * he may uſe ſuch evaſive anſwers, though he foreſees that his injuſt enemies will be deceived by them.

8. Since maintaining veracity in all our converſation is of ſuch importance in ſociety, it is plainly unlawful to uſe falſe-ſpeaking from any of thoſe ſmaller motives which frequently occur in life; ſuch as, to pacify men in a paſſion of anger, or to comfort the ſorrowful; or in general to obtain any advantages or avert any evils which are not of the very higheſt kinds. For we may by other means conſiſtent with all candour and ſincerity generally obtain theſe ends more effectually, and either prevent theſe evils, or aſſiſt men to bear them with fortitude. And however ſuch falſe-ſpeaking may at firſt have ſome effect, before it becomes known that we make no conſcience of ſpeaking truth in ſuch caſes; yet, when this is once known, and when men generally take this liberty, they loſe all credit in ſuch caſes with others, and mutual confidence is deſtroyed. So much concerning veracity.

IV. But there are other ſacred duties in the uſe of ſpeech; and this in the firſt place, that we ſtudy to make our ſpeech profitable to others, in recommending and cheriſhing ſincere virtue, in correcting the vain imaginations of men about the true happineſs of life; in teaching, admoniſhing, exhorting, comforting,

* Of this there are inſtances in very great characters; as alſo of many expreſſions which the ſpeaker abundantly knew that the hearers would underſtand in a very falſe ſenſe.

and ſometimes reproving ſharply, and all theſe ſhew
an hearty intention of doing good. Theſe too
among the moſt honourable offices, to reconcile frie
who have been at variance, to prevent animoſities,
to compoſe them. Nor is there any thing a good
will more conſcientiouſly avoid than hurting the
racters of others. Nay he will not only avoid
ſpreading of falſe calumnies, but will conceal the
cret faults of others, unleſs he be forced to div
them to prevent the ſeducing the innocent, or to a
ſome public evil. For men who have loſt their
racters and are publicly infamous, are on this acc
far harder to be reclaimed to virtue; and the more
vice appears to abound in the world, the vicious
the more impudent.

Critics have obſerved that many words, beſide
primary meaning, have alſo an additional ſignifica
of the diſpoſitions of the ſpeaker: and hence there
often three ſorts of names for the ſame things, or
tions. One of a middle nature, barely denoting
object; another denoting the ſpeaker's delight i
or his keen paſſion for it; the third denoting his a
ſion and hatred of it. And from this we ſee how
anſwer the reaſonings of the old Cynics, againſt
poſing any crime in obſcenity of language; that
it be true, there is no work of God, or natural act
which may not be a proper ſubject of inquiry
ſpeech to a good man, on ſome occaſions, yet we
evidence great depravation and turpitude of mind

eaking about the diſſolute actions of others: to wit, uſing ſuch words as betray a like diſſolute temper ourſelves, and a delight in ſuch vices, and kindle e vitious paſſions in the minds of the hearers. And this conſiſts obſcenity, which is hateful and deteſt- le in converſation.

CHAP. XI.

Of OATHS *and* VOWS.

OATHS are deemed a natural confirmat promiſes or teſtimonies, in the more imp affairs: an *oath* is "a religious act in which fo "firmation of ſomething doubtful, we invoke G "witneſs and avenger, if we ſwerve from truth truly good man indeed will ſo ſtrictly regard ve that ſuch as know him well need not require his But when the intereſts of thoſe are at ſtake who not his character, they may juſtly demand his in confirmation either of his teſtimony or his p Since the uſing of oaths in ſuch caſes contains piety toward God; but is rather an expreſſion o reverence; as we acknowledge in ſwearing his ſal knowledge, and government, and juſtice.

And ſince this perſuaſion has obtained, in tions and ages, that God exerciſes a juſt gove over the world, inflicting puniſhments on the w this invocation of God as witneſs and aveng raiſe in mens minds an higher ſenſe of their ob ons, and deter them from falſhood. But we m imagine that our invocations make God more tive in obſerving, or more keen in puniſhing fidy; or that by our voluntary conſent, we g any new right of puniſhing he had not before

vn guilt indeed is made much greater when, after the nfirmation of an oath, we either violate our promi-s, or falſify in our teſtimony.

To ſwear about trifling matters, or without any uſe, is very impious; as it plainly tends to abate iat awful reverence which all good men ſhould con-ntly maintain toward God; and is a plain indication o contempt. Where perjuries in ſerious matters grow equent in any ſtate, the magiſtrates or legiſlators are h nerally chargeable with much of the guilt, if they e ther frequently exact oaths without neceſſity in ſmal- i matters, or when the oaths give no ſecurity in the n int in view *; when the engagement deſigned may ni her be impracticable, or appear to the perſons con- p rned to be unlawful; or if oaths are required ‡ where s ere are great temptations to perjury, with hopes of o punity from men. They alſo do bad ſervice to reli- s n who do not appoint an awful ſolemn form of rds, fit to ſtrike the minds of men with reverence n ſuch an action.

ve II. It is no doubt vain to exact from others, or w ſwear by any being whom the ſwearer judges not ng eſted with divine power, ſo as to invoke that being

ob

e m * Thus engagements by oath to adhere to certain ſchemes ore religion, which may afterwards appear falſe; or to a go-nment which may appear an injuſt uſurpation.

g ‡ Thus *purgatory oaths* as to capital crimes, or very ſecret e g ters of ſcandal, or injuſtice, or about a man's ſecret opini-ore generally have no good effect.

as witneſs and avenger. And yet there are ſome f
of oaths truly valid and not unlawful, though no
moſt convenient, where without expreſſing the
of God, the ſwearer either names ſomething very
or neceſſary to himſelf * upon which he is under
to imprecate the divine vengeance, or that he ma
deprived of it if he ſhould act perfidiouſly; or
invokes God under ſome § metonymical expreſſion.

Though it be idle to exact an oath from any on
any being whom he conceives not as endued with
vine power, nor exerciſing any providence; yet
are certain general deſcriptions of the Deity in w
men of the moſt oppoſite religions agree: ſuch
fore ought to be uſed, when perſons of different
ous ſentiments are required to ſwear.

As in covenants, ſo in oaths, he is juſtly deem
have ſworn, and to be liable to the penalties of
jury ſhould he falſify, who profeſſing an intenti
ſwearing makes ſuch ſigns as ordinarily ſignify to o
that one ſwears.

Altho' an oath and a promiſe, or an aſſertion,
often be expreſſed by one and the ſame gramma
ſentence; yet the act of ſwearing is plainly a di

* So we underſtand ſwearing by one's *head*, his *life*, *ſoul*, his *children*, his *prince* or *patron*, the *earth*, the *ſun*.

§ It is thus men ſwear by their *faith*, viz. the object or by the *heavens*, the *temples*, or *altars*; for the Divini ſiding in them, or to whom they are dedicated.

from that of promiſing or aſſerting; as it conſiſts in the invocation of God to avenge if we violate our faith. This ſhews therefore that mens duties are not altered as to their matter by an oath; nor any new matter of obligation produced; nor any covenant or promiſe otherwiſe void confirmed; nor juſt exceptions excluded; nor conditional contracts made abſolute; nor any obligation impoſed to act contrary to the perfect rights of others, or about matters not ſubjected to our power, or what would be a direct piece of irreverence and impiety toward God, or a violation by any ſpecial prohibition, by which we are precluded from tranſacting in certain affairs. But in matters naturally ſubjected to our power and committed to human prudence, as we may bind ourſelves by a common contract, ſo much more by one confirmed by oath, even when we have entered into it imprudently and raſhly, contrary to the rules of diſcretion; unleſs when there has been a plain obvious fraudulent deſign of defeating ſome obligations of humanity.*

III. A PROMISE tho' confirmed by oath can produce no obligation, unleſs it has been accepted by the party, who alſo after his acceptance may remit to us his right, and free us from the promiſe. A promiſe in like manner is void, upon the declared diſſent of a perſon whoſe conſent was neceſſary before the promiſer could oblige himſelf, or the other party accept of it.

* Mark vii. 11, 12, 13.

Where one requires of us an oath by his juſt a
thority, and preſcribes to us the form of words; if
underſtand his ſenſe of the words, and can ſincer
ſwear in that ſenſe, it is well; if not, we ſhould
take the oath. No inferior magiſtrate deputed to t
an oath in the name of the ſtate has a right to g
explications of the *formula* preſcribed by the ſupre
powers.

Oaths according to their different purpoſes are
vided into *promiſſory* and *aſſertory*. Oaths of this la
ſort when required by a judge are called *neceſſar*
and when one party in judgment refers the cauſe
the oath of the other, it is called *judicial*. If this
done, not in judgment, but by the private deed of
parties, it is called *voluntary*. When an oath is
manded from the perſon accuſed in a criminal acti
to refute imperfect proof; it is called a *purgatory oa*
or *oath of purgation*.

But in ſuch caſes where a perſon's life or char
ter is concerned, as there are very high temptati
to perjury; this way of exacting purgatory oaths
trials is highly improper and injuſt. By this me
the impious and wicked will always be abſolved; a
thoſe only convicted who retain ſuch a ſenſe of pi
that they will not even for preſervation of life or c
racter perjure themſelves. A good man ſurely wo
rather chooſe that ſuch perſons ſhould eſcape puni
ment for a doubtful crime, (of which, if they h
really been guilty, they will probably ſoon repent

merely) than that they ſhould be brought to ſuffer by their very ſenſe of religion.

IV. A vow is a religious promiſe made to God about ſomething to be done or performed. In vows we do not conceive a right transferred to men, unleſs they have been alſo attended with a contract. The main uſe of vows is this, that by a ſerious conſideration of a juſt and holy Deity beholding all our actions, we may further confirm all our pious and virtuous reſolutions; and be the more cautious of neglecting our duty, leſt we ſhould alſo involve ourſelves in the horrid guilt of perjury.

But as no promiſe not accepted by the party to whom it is made can be obligatory; and as we are ſure God will not accept any promiſes made to him raſhly, but of any ſudden fear, or other paſſion, which is contrary to the man's duty; and it is moſt unworthy of the Deity to imagine him as it were inſidiouſly watching to catch advantages of the incautious, timorous, ruthful, or ſuperſtitious; or that, contrary to the common intereſt of all, he has ſome favourite orders of men for whoſe advantage he is acting the part of a charging agent, ſnatching at all opportunities of gain from them; hence it muſt appear, that vows can produce no obligation to ſuch actions or performances as would not antecedently have been pious, humane, and prudent. Much leſs are vows of any avail which men lay on themſelves from hatred, envy, groundleſs or exceſſive anger, or contrary to either the perfect rights

of others, or even any obligations of humanity*. V
therefore produce no new matter of obligation.

CHAP. XII.

Concerning the VALUES *or* PRICES *of* GOOD

TO maintain any commerce among men in i
changing of goods or ſervices, the value
them muſt be ſome way eſtimated: for no man w
give away things of important and laſting uſe or
ſure in exchange for ſuch as yielded little of eit
nor goods which coſt much labour in acquiring,
ſuch as can eaſily be obtained.

The ground of all price muſt be ſome *fitneſs* i
things to yield ſome uſe or pleaſure in life; wit
this, they can be of no value. But this being pre
poſed, the prices of things will be in a compound
portion of the *demand* for them, and the *difficul*
acquiring them. The *demand* will be in propo
to the numbers who are wanting them, or their n
ſity to life. The *difficulty* may be occaſioned
ways; if the quantities of them in the world be ſm
if any accidents make the quantity leſs than ordi
if much toil is required in producing them, or
ingenuity, or a more elegant genius in the artiſts
the perſons employed about them according t

* Mark vii. 11, 12.

ſtom of the country are men in high account, and ve in a more ſplendid manner; for the expence of his muſt be defrayed by the higher profits of their bours, and few can be thus maintained.

Some goods of the higheſt uſe, yet have either no rice or but a ſmall one. If there's ſuch plenty in ature that they are acquired almoſt without any la- our, they have no price; if they may be acquired by ſy common labour, they are of ſmall price. Such the goodneſs of God to us, that the moſt uſeful neceſſary things are generally very plentiful and ily acquired.

Other things of great uſe have no price, either be- uſe they are naturally deſtined for community, or nnot come into commerce but as appendages of ſome- ng elſe, the price of which may be increaſed by m, though they cannot be ſeparately eſtimated *; ecauſe ſome law natural or poſitive prohibits all ying or ſelling of them. Of this laſt ſort are all re- ious offices, actions, or privileges; and even the ſa- of religious offices, which are either deemed what is neceſſary for the ſupport of perſons in ffices, or are committed to their truſt as funds erality and charity toward the indigent. Buying elling of ſuch things from a well known piece ory is called *ſimony*.

II. BUT as it may often happen that I want ſome

* Examples of theſe ſorts are the air, the light of the ſun, me air in certain ſituations, fine proſpects.

goods of which my neighbour has plenty, while I ha plenty of other goods beyond my own uſe, and y he may have no need of any of my ſuperfluous ſtore or that the goods I am ſtored with beyond my occ ſions, may be quite ſuperior in value to all I wa from my neighbour, but my goods cannot be divide into parcels without great loſs: for managing of com merce there muſt ſome ſort of ſtandard goods be a greed upon; ſomething ſettled as the meaſure of v lue to all others; which muſt be ſo generally deman ed, that every one will be willing to take it in e change for other goods, ſince by it he may obta whatever he deſires. And indeed as ſoon as any thi is thus made the ſtandard of all values, the dema for it will become univerſal, as it will ſerve eve purpoſe.

The goods which are made the ſtandard, ſhou have theſe properties; firſt, they ſhould be of hig value, that ſo a ſmall portable quantity of them m be equal in value to a great quantity of other thing again, they ſhould not be periſhable, or ſuch as we much in uſe; and laſtly they ſhould admit of all ma ner of diviſions without loſs. Now theſe three pr perties are found only in the two more rare meta ſilver and gold; which therefore have been made t ſtandards of commerce in all civilized nations.

III. At firſt they have dealt in them by * weigh

* This appears both by hiſtory, and the Roman word *pendere, expendere*, &c.

but to prevent the trouble of making accurate divisions of the ſeveral bars or pieces of metal, and to prevent frauds by mixing them with baſer metals, *coinage* has been introduced. For when the coining of money is committed under proper regulations to truſty hands, there's ſecurity given to all for the quantities of pure metal in each piece, and any broken ſums agreed upon can be exactly paid without any trouble.

But the real value of theſe metals and of money too, like that of all other goods, is leſſened as they are more plentiful; and increaſe when they grow ſcarcer, tho' the pieces keep the ſame names. The common neceſſaries of life have a more ſtable natural price, tho' there are ſome little changes of their values according to the fruitfulneſs of the ſeveral ſeaſons. Were one to ſettle perpetual ſalaries to certain offices, which ſhould ſupport men perpetually in the ſame ſtation in reſpect to their neighbours, theſe ſalaries ſhould be conſtituted in certain quantities of ſuch neceſſary goods as depend upon the plain inartificial labours of men, ſuch as grain, or other neceſſaries in a plain ſimple way of living.

IV. No ſtate which holds any commerce with its neighbours can at pleaſure alter the values of their coin in proportion to that of goods. Foreigners pay regard, not to the names we give, but to the real quantities of pure metal in our coin, and therefore the rates of goods muſt be proportioned to theſe quan-

goods of which my neighbour has plenty, while I have plenty of other goods beyond my own uſe, and yet he may have no need of any of my ſuperfluous ſtores; or that the goods I am ſtored with beyond my occaſions, may be quite ſuperior in value to all I want from my neighbour, but my goods cannot be divided into parcels without great loſs: for managing of commerce there muſt ſome ſort of ſtandard goods be agreed upon; ſomething ſettled as the meaſure of value to all others; which muſt be ſo generally demanded, that every one will be willing to take it in exchange for other goods, ſince by it he may obtain whatever he deſires. And indeed as ſoon as any thing is thus made the ſtandard of all values, the demand for it will become univerſal, as it will ſerve every purpoſe.

The goods which are made the ſtandard, ſhould have theſe properties; firſt, they ſhould be of high value, that ſo a ſmall portable quantity of them may be equal in value to a great quantity of other things: again, they ſhould not be periſhable, or ſuch as wear much in uſe; and laſtly they ſhould admit of all manner of diviſions without loſs. Now theſe three properties are found only in the two more rare metals, ſilver and gold; which therefore have been made the ſtandards of commerce in all civilized nations.

III. At firſt they have dealt in them by * weight

* This appears both by hiſtory, and the Roman word *pendere, expendere*, &c.

but to prevent the trouble of making accurate divisions of the ſeveral bars or pieces of metal, and to prevent frauds by mixing them with baſer metals, *coinage* has been introduced. For when the coining of money is committed under proper regulations to truſty hands, there's ſecurity given to all for the quantities of pure metal in each piece, and any broken ſums agreed upon can be exactly paid without any trouble.

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IV. No ſtate which holds any commerce with its neighbours can at pleaſure alter the values of their coin in proportion to that of goods. Foreigners pay regard, not to the names we give, but to the real quantities of pure metal in our coin, and therefore the rates of goods muſt be proportioned to theſe quan-

tities. But after a legal ſettlement of the denomina-
tions of coins, and many contracts and obligation
ſettled in theſe legal ſums or denominations, a decre
of ſtate raiſing the nominal values of the pieces will b
a fraud upon all the creditors, and too much gain t
the debtors; and the lowering their nominal value
will have juſt the contrary effects.

The values too of theſe two metals may alter thei
proportions to each other; if an extraordinary quan-
tity of either of them be brought from the mines; o
a great conſumption made only of one of them in the
ornaments of life, or great quantities of it exported.
And unleſs the legal denominations or values of the
pieces be changed in like manner, ſuch coin as is va-
lued with us too low in proportion to the natural value
of the metal, will be exported; and what is valued
with us too high will remain, or be imported, to the
great detriment of the country.

Whereſoever a coinage is made in baſer metals,
the quantities in each piece muſt be made ſo much the
greater; otherwiſe the trade with foreigners muſt be
loſt. When notes or tickets paſs for money, their va-
lue depends on this, that they give good ſecurity for
the payment of certain ſums of gold or ſilver.

CHAP. XIII.

Of the SEVERAL SORTS *of* CONTRACTS.

CONTRACTS are divided into the *beneficent* and *onerous:* in the former ſome advantage is gratuitouſly deſigned for one of the parties; in the latter the intereſt of both is equally regarded, and the parties profeſs to transfer mutually things of equal value.

There are three ſpecies of beneficent contracts, * *commiſſion* undertaken gratuitouſly, gratuitous *loan for uſe*, and gratuitous *cuſtody* of the goods of others.

In undertaking gratuitouſly to manage the buſineſs of others by their commiſſion, if they have preſcribed a particular manner of executing it, we are obliged to follow their orders; or if we depart from them we are liable to compenſate what damage thence ariſes. Where the matter is left to our prudence; we are deemed bound to uſe ſuch care as a wiſe man uſes in like matters of his own, nor are we liable for every accident which might poſſibly have been prevented by the utmoſt care; unleſs we have expreſsly undertaken for the utmoſt diligence, or the high nature of the buſineſs plainly required it; or we have obtruded our-

* There are no preciſe technical words in Engliſh to anſwer the three Latin words *mandatum*, *commodatum*, and *depoſitum*. And therefore the formal definitions are omitted.

ſelves officiouſly, when others more capable mig
have been obtained.

We muſt obſerve this about all beneficent co
tracts, that he who intends a favour to others, is n
deemed to undertake an higher obligation than he e
preſsly conſents to, or than the nature of the buſine
commonly requires: but the perſon on whom the f
vour is conferred, out of gratitude ſhould deem hi
ſelf more ſtrictly bound, and make good all loſſes o
caſioned by any the lighteſt fault of his; that no
may have occaſion to repent of their intended favou
to him.

II. THE gratuitous loan for uſe where the ve
ſame goods are to be reſtored, binds the borrower
the higheſt care and to make good all loſſes occaſio
ed by any negligence of his: (2) nay alſo to ma
good ſuch accidents as the goods had eſcaped h
they remained with the lender, except he generou
remit his claim: nor (3) can the borrower take a
other uſe than the lender granted: and (4) he oug
to reſtore them in good order at the time agreed, n
further impaired than they muſt be by the uſe allowe
Nay humanity would oblige to reſtore them ſooner
the owner needs them; or if we need them more a
keep them, to make good the loſs he ſuſtains by wa
ing them.

The gratuitous lender is to refund any expen
made upon the goods lent, except ſuch as are or
narily requiſite in the uſe of them; or at leaſt to

ſund the value of any improvements made upon them as far as they are bettered for his purpoſes, and ſo he is enriched. The Civilians diſtinguiſh between this contract and a *loan for conſumption*, in which the ſame individual goods are not to be reſtored, but equal quantities, weights or meaſures.

III. DEPOSITING of goods for gratuitous cuſtody, obliges the keeper to ſuch diligence as a wiſe man uſes in keeping like goods of his own, and to make good any loſſes by any groſs negligence of his. He ought to make no uſe of them without the owner's conſent, and reſtore them when demanded; except it be for ſuch purpoſes wherein he might have a right by force to reſiſt the owner. And he juſtly inſiſts to be indemnified as to all expences wiſely employed for preſervation of the goods *.

IV. IN the *onerous contracts*, or theſe for valuable conſideration, the parties profeſs or undertake to tranſfer mutually goods or rights of equal value. And therefore honeſt men ſhould conceal nothing, or give no falſe repreſentations about the qualities eſtimable in ſuch goods, or their defects: and when they inadvertently have departed from equality, according to the judgment of a wiſe arbiter, he who had leſs value than he gave, ſhould have ſomething further paid him till the contract be brought to equality; and this he has a perfect right to demand; tho' no courts of juſ-

* The tranſlator omits the next paragraph in the original, explaining the *actiones directae et contrariae* of the Civilians.

tice could have time to give redreſs to every little iniquity in ſuch matters.

Mutual donation is not to be reckoned among onerous contracts, as in it there is no regard had to equality between the things mutually given.

From what we ſaid about the grounds of price 'tis plain that in eſtimating the values of goods in any place, we are not only to compute the diſburſements made in buying, importing, and keeping them ſafe with the intereſt of money thus employed; but alſo the pains and care of the merchant; the value of which is to be eſtimated according to the reputable condition in which ſuch men live, and to be added to the other charges upon the goods. This price of the merchant's labour is the foundation of the ordinary profit of merchants. But as goods exported or imported are ſubject to many accidents, by which they may even periſh altogether; this is a natural reaſon for advancing the price of ſuch goods as are ſafe. And as merchants are liable to loſſes when the prices of ſuch goods, as they are well ſtored with, by any unexpected plenty happen to fall; to make good ſuch caſual loſſes they have a right to take a larger profit, when the goods they are well ſtocked with happen by any accidental ſcarcity of them to riſe in their prices.

V. THESE are the principal onerous contracts. 1. *Barter* or exchanging goods for goods. 2. *Buying* and *ſelling*; the ſimpleſt form of which is at once

paying the money and receiving the goods. If 'tis agreed that the goods are to be delivered on some future day, the price being previously paid, or such security given for it as the seller accepts; before the day fixed the seller must run the hazard of what accidents befal the goods; but after the day, if the seller was ready then to deliver them, he is only in the case of one with whom they were deposited; as he would have been from the first if he was then ready to deliver them *.

Sometimes men purchase no certain goods but an hazard, or some advantage upon a contingency. In such contracts equality may be preserved if the price is abated below the real value of the advantage in a just proportion to the hazard of our gaining no advantage at all.

VI. In *location*, or setting to hire, for a certain price we allow one the use of our goods, or our labour. The setter should make the goods fit for use, and uphold them so; and the hirer is bound to use them as discreet men use like goods of their own, and to make good any losses occasioned by any gross negligence of his. If the goods perish without any fault of his, he is no longer liable for the price of the hire than he had the use of them: or if without his fault

* The translator here omits a paragraph explaining some terms of the Roman law not necessary to an English reader. Such as *addictio in diem*, *lex commissoria*, *lex retractus*, *protimesios*, &c.

they become leſs fit for uſe, he may inſiſt on an abatement of the price or rent. But as in lands all the profits of a plentiful year fall to the tenant, ſo he muſt bear the caſual loſſes of a leſs fortunate one. Indeed the rarer caſes of extraordinary calamities, ſuch as of wars, inundations, peſtilence, ſeem to be juſt exceptions; as the tenant cannot be preſumed to have ſubjected himſelf to rents in ſuch caſes. * And in moſt of contracts the agreements of parties alter the obligations.

One who is hired for a certain piece of work, if he is hindered from it by any accident, has no claim for the hire. But when one hires a perſon by the year, or for a longer time, the hirer ſeems bound to bear the loſs occaſioned by any ſuch ſhort fits of ſickneſs as the moſt firm conſtitutions are ſubject to, nor can he on that account make any deduction from the price agreed upon.

VII. In *loans for conſumption* †, we don't expect the ſame individual goods, but equal quantities by weight or meaſure. If the loan is not deſigned as a favour, there's a right to demand *intereſt*. Nor is it neceſſary to make intereſt lawful that the goods lent be naturally fruitful: for tho' money for inſtance yields no natural encreaſe; yet as by it one may purchaſe ſuch goods as yield increaſe; nay by employing it in

* A part alſo of the following ſection is omitted for the ſame reaſon, about the *locatio operis* and *locatio operae*.

† *Mutuum*.

trade or manufactures may make a much higher gain; 'tis but natural that for ſuch valuable advantages accruing to us by the loan, we ſhould give the owner of the money ſome price or recompence proportioned to them. The prohibition of all loans for intereſt would be deſtructive to any trading nation, tho' in a democracy of farmers, ſuch as that of the Hebrews was, it might have been a very proper prohibition.

The juſt intereſt of money is to be determined according to the quantity of wealth employed in trade. Where there's a ſmall quantity of money in a nation, and conſequently all goods very cheap, a great profit is made by any ſmall ſums employed in trade with foreigners. And therefore a great intereſt may well be paid. But where much money is employed in trade, a ſmaller profit is made on each ſum thus employed, as the prime coſt of goods is high; and therefore a ſmaller intereſt can be afforded for it. If civil laws ſettling intereſt don't regard theſe natural cauſes, they will not have their effect.

The obligations in the contracts of *partnerſhip* are abundantly known by the rules of arithmeticians.

VIII. We ſaid above that contracts about hazards may maintain the juſt equality: and ſome of them are of great uſe in ſociety, theſe particularly which inſure againſt ſhipwreck, robbery, or fire: as by their means many active induſtrious hands have their ſtocks preſerved to them, which otherwiſe had periſhed. Theſe contracts ſeem of the ſame effect with a humane and

ſalutary partnerſhip among multitudes to ſhare among them any loſſes which may happen; ſince 'tis by the premiums paid by thoſe whoſe goods are ſafe that the inſurers are enabled to make good the loſſes of the unfortunate.

Nor is there any thing blameable in this that a large number for diverſion contribute to purchaſe any piece of goods, and then caſt lots who ſhall have it: provided none of them expoſe to ſuch hazards ſo large a portion of their goods that the loſs of it would occaſion any diſtreſs to themſelves or families.

The ſame may be ſaid of wagering, and of various games in which there's hazard; which are not always blameable on the account of the hazard, or of any inequality. But then there is nothing more unworthy of a good man than, without neceſſity, to expoſe to uncertain hazard ſuch a ſhare of his goods, as the loſs of it would diſtreſs his family; or to be catching at gain from the fooliſh raſhneſs of others, ſo as to diſtreſs them. All ſuch contracts therefore are to be condemned, unleſs they are about ſuch trifles as men of wealth can afford to throw away upon their amuſements. And beſides, 'tis highly unbecoming a good man to give himſelf up entirely to diverſions, or waſte much time upon them; or ſo to inure himſelf to amuſements, as to contract habits of indolence and trifling, making him leſs fit or inclined for ſerious buſineſs.

As to theſe more public projects of lottery in which

great multitudes may be concerned; as they bring in no new wealth to a ſtate, and only enrich ſome few of the citizens by the loſſes of others; and as men thro' ſome vain opinions of their own good luck are generally very prone to them; they ſhould be every where under the reſtraint of laws; leſt that wealth, which were it employed in manufactures or commerce would be adding new ſtrength to the ſtate, ſhould be turned into this uſeleſs and diſhonourable channel, expoſed too to innumerable frauds, and an inſociable, fooliſh, and ſlothful avarice be encouraged among the citizens.

IX. In confirmation of contracts men often give bail or ſureties, and pledges. The bail or ſurety is bound to make good what is due, in caſe the principal fails. And as the creditor frequently truſts more to the ſurety than to the principal, his obligation is equally ſacred: nor may he uſe any evaſive arts more than if the debt were wholly his own: nor can he juſtly even delay the payment; unleſs he finds a fraudulent colluſion between the creditor and the principal to diſtreſs him.

The obligation of the ſurety may be ſtricter than that of the principal, if he has given either a pledge or an oath for performance; but as he is ſurety he cannot be bound in a different ſum or different goods, or payable at a different time or place, or upon a different foundation. He may juſtly inſiſt that a ſuit be firſt commenced and judgment given againſt the prin-

cipal; and where more than one are ſureties, each one may inſiſt that the loſs be divided either equally among them, or in the proportion in which they bound themſelves.

Sureties were ſometimes given in criminal actions. They may be juſtly liable to pay the fines. But it would be inhumane to allow them to be ſubjected to any corporal puniſhments for the crimes of others.

We formerly touched at the ſubject of pledges and mortgages. If the things pledged yield increaſe, this is to be deducted annually from the intereſt or principal of the debt. The *clauſe of forfeiture* at the day fixed has no iniquity in it, provided any ſurplus of value in the pledge be reſtored to the debtor after the debt is thus diſcharged. The pledgee is bound to keep the pledge with ſuch diligence as a diſcreet man keeps like goods of his own, and not anſwerable for any thing further; as this contract equally regards the utility of both parties. Pledges and mortgages conſtitute real rights not to be defeated by any prior perſonal rights.

CHAP. XIV.

* OBLIGATIONS *reſembling thoſe from* CONTRACTS.

BESIDE theſe obligations and rights already mentioned, there are others which ariſe from ſome lawful action of the perſon bound: of ſuch as ariſe from unlawful actions we treat in the next chapter. Theſe rights ariſing from lawful actions, ariſe either from the nature of property, or from ſome manifeſt intereſt of ſociety, and common ſocial laws. The obligations anſwering to them the Civilians feigned to ariſe from contracts, that the forms of the actions might be the ſame. They are quite different from thoſe of *tacit conventions*, as in tacit conventions we truly conclude conſent from ſome action; but in thoſe 'tis plainly feigned, though we know there was no conſent, as the matter itſelf is equitable. The obligation by a tacit convention is quite prevented by a previous contrary declaration of the party: but not ſo in theſe we now ſpeak of; as they have another juſt foundation, independent of the conſent of the perſon obliged.

Of theſe there are two claſſes, one ariſing from this, that a perſon intermeddles without any contract with the goods of others, or ſuch upon which others have a juſt claim: the other, from a perſon's taking

* *Obligationes quaſi ex contractu.*

to himſelf and holding ſome valuable advantage at the expence and loſs of others, who conſented not to ſuſtain ſuch loſs gratuitouſly. In the former claſs is included the obligation of ſuch as poſſeſs the goods they know belong to others, to reſtore the goods with their profits; as alſo his obligation * who without commiſſion manages any buſineſs for an abſent perſon, or for a minor. All theſe are bound to account, and to reſtore the goods with their increaſe and profits.

The like is the obligation of the heir or executor, toward the creditors or legatees of the deceaſed; and it ariſes from his entering heir, or undertaking the execution of the will. For 'tis plain, all the effects of the deceaſed are naturally chargeable with his debts, and with whatever others have a perfect claim to. He therefore who takes poſſeſſion of the effects, the only fund whence theſe debts are to be paid, is bound to pay them, as far as the effects go, deducting for himſelf the neceſſary expences of management. The heirs or executors however may always claim the benefit of an *inventary*, that they may not be bound further than they find effects of the deceaſed. Nor need we feign any contracts to explain the juſt grounds of theſe obligations, nor that the heir or executor is the ſame perſon with the deceaſed.

II. As to the ſecond claſs; where a man is bound by deriving to himſelf ſome advantage at the expence

* *Negotii utilis geſtor.*

of others, who did not conſent that it ſhould be gratuitous: under this is included the obligation of thoſe on the other hand whoſe buſineſs was managed by others without commiſſion, and that of minors toward their guardians, to indemnify them, and compenſate their labours in all uſeful ſervices, and to ratify any contracts prudently made for their behoof; and refund any prudent expences in their education.

What parents expend in educating their own children, we conclude from the tender parental affection, that it is intended as a donation, when the parent has not declared the contrary. Nay parents are naturally bound to ſupport and educate their children ſuitably to their condition, and to convey to them at death what remains of their goods. But if a parent is in great ſtraits, or if any child has ſome other way obtained a plentiful fortune, a parent in theſe caſes may juſtly charge a child with the whole expence of its ſupport and education, and exact it for his own maintenance in old age, or to ſupport his other children.

III. BUT if one maintains and educates the child of another; there is no preſumption here that it was done as a donation; it is more preſumable that a debt is hereby conſtituted, to be diſcharged by the goods or future labours of this child, as far as the expence was truly made for the behoof of the child; but not what was intended for the ſplendor of his family who maintained it. Nay further, as generally all this ex-

pence upon an indigent orphan would be loſt entirely if it died before it were capable of labour; the maintainer might perhaps, in the rigour of juſtice, be allowed to charge ſomething more on account of this hazard; and by this allowance men will be more encouraged to ſuch neceſſary care of indigent orphans. But then this hazard continually decreaſes as the child advances in years, and cannot increaſe conſiderably the charge, except for a few of the firſt years. An indigent orphan thus maintained is therefore in no worſe caſe than that of any indigent perſon who without any fault of his is involved in a great debt, from whom the creditor may juſtly demand payment by his labours, while the debtor retains all the other natural rights of mankind, and whenſoever either by his labours, (of which, he may juſtly chooſe to turn himſelf to ſuch as may be moſt beneficial to him, and ſooneſt diſcharge the debt,) or by the liberality of any friend, he can diſcharge it, he can no longer be juſtly detained in ſervice. Now were an account of all the neceſſary charge of maintenance, and of the value of labour, juſtly ſtated, it would appear, that ſuch an orphan found in body and mind could always fully diſcharge ſuch debt by his labours before he were thirty years of age: and conſequently that this can never be a foundation for perpetual hereditary ſlavery; even allowing an extraordinary intereſt were charged upon the expences becauſe of the hazard, as is done upon contracts of bottomry in trade. And

yet this charge must appear pretty inhumane upon persons in any grievous distress: nor can any distress be conceived greater than that of an indigent child destitute of all aid from its parents.

Under this branch too is included the obligation of him who using the plea of *necessity*, (of which hereafter) has done damage to others; and of one who received what appeared due, but afterward it is found was not due; or what was paid upon a contract against which there lay a just exception making it void; or received any price, in consideration of something which is not paid or performed by him: who are all obliged to indemnify and restore.

When one partner in a company has preserved or improved at his own expence any of the common goods of the company; the obligation of the other partners toward him is of the latter class; and his to them of the former.

The obligations contracted for us by others, if they were done by our commission, are manifest contracts; if not, they come under the case of *business managed without commission* already mentioned.

CHAP. XV.

Of RIGHTS *arising from* DAMAGE *done, and the* RIGHTS *of* WAR.

FROM the former principles it is plain, that each one is obliged to repair any damages he may have done to others, if they desire it. But cases often happen when a good man justly may, and ought to do, what may occasion some damages to others; if for instance, some goods of his of incomparably greater value cannot be preserved, or some of the greatest evils threatening him or his friends be prevented, otherwise than by doing what may occasion some small loss to others. He has a perfect right to act thus; and yet he always in such cases becomes liable to make good their losses sustained for his safety or that of persons dear to him. Since this is a sacred social principle of equity, that "no man for his own advantage "should impair the advantages of others; or if any "necessity force him to it, that he make good their "loss as soon as possible."

The same is more manifest in damages done injuriously. Human society cannot be maintained unless men are obliged to compensate all such damages. Laws prohibiting injuries would have no effect, if after they were done, the injurious could enjoy their gain with impunity.

Nay the ſafety of ſociety further repuires that the injuſt ſhould be reſtrained from injuries by the terror of ſevere puniſhment; leſt the good ſhould be continually expoſed as a prey to them. And therefore altho' God and nature require of us good-will, clemency and lenity, even toward the evil, yet ſurely they require a ſuperior degree of theſe affections toward the good. And the injuſt may be reſtrained by violence and puniſhments, and obliged to compenſate the injuries done and give ſecurity for their innocent behaviour for the future, without any malice or ill-will toward them; nay it is doing them rather a good office, to reſtrain them thus from further crimes.

II. By damage is underſtood not only "the depriving men of their goods, and ſpoiling or detaining them injuriouſly; but any intercepting or preventing their natural or artificial profits; with all thoſe inconveniencies which enſue upon the firſt wrongs; all gain prevented, as well as loſſes occaſioned.

Whoever by himſelf or by others, whether by acting or omitting contrary to his duty, has occaſioned any damage, which otherwiſe would not have happened, may be deemed an author of the injury. Such as only rejoice in the injuries done and praiſe them, may indeed ſhew ſuch perverſeneſs of temper as deſerves puniſhment; but as it cannot be diſcerned whether the ſame injuries might not have been done without ſuch congratulations or applauſes, men are not

made liable to compenſation on theſe accounts alone. Where an injury has been done by many in concert, they are bound to compenſation jointly and ſeverally. But if one has compenſated the whole, the ſufferer can demand nothing further on this account from the reſt; but he who repaired the whole damage may oblige his partners to bear their ſhares with him. The caſe of puniſhments is quite different; for puniſhment may be juſtly inflicted on all for the common ſafety.

Among the authors of damage, he is deemed the principal, who having authority over others, commanded them to do it. He therefore is firſt to be called to account, if it can be done; if not, we may demand reparation from the reſt; ſince he could not by any orders of his give them any immunity from this obligation. And though the executors may be free from any guilt, having had the plea of neceſſity, in avoiding the far greater evils threatened them if they had not obeyed orders; yet they are not notwithſtanding bound to make compenſation: ſince their innocent neighbours muſt not ſuffer, to free them from the evils they were threatened with.

III. If one without any fault, by mere accident does damage to another; he is not ſtrictly bound to repair it. Nay if one engaged in any important ſervices to the community, in any dangerous emergence, where it is ſcarce to be expected that men can uſe the greateſt caution, happens by ſome negligence to do

damage to his neighbour, it ſhould be rather repaired by the community.

Damage done by hired ſervants without their maſter's orders, ſhould be repaired by themſelves. What is done by a ſlave binds the maſter to divide the price of the ſlave in the ſame manner as the effects of a bankrupt are divided among the creditors: computing on one hand the value of the ſlave, which is the claim of the maſter, and on the other that of the damage done, which is the claim of the ſufferer; and in proportion to theſe two the price of the ſlave is to be divided. In the ſame manner the owner is bound to compenſate damage done by his cattle, without any fault or negligence of his. If civil * laws have been more rigid upon the owners, it has been with this view, that the owners may be made more careful in guarding well their ſlaves and cattle, which are kept for their own behoof.

If one without any malicious deſign has done damage, he ought to ſhew himſelf ready at firſt to do or perform whatever any wiſe arbiter ſhall judge reaſonable, and to declare the innocence of his deſigns. If one has had an evil intention, and truly repents afterwards of it; he ought alſo to offer compenſation, to beg pardon, and give whatever ſecurity againſt future injuries a prudent arbiter ſhall think ſufficient. No man truly repents of any injury he has done, nay

* Exod. xxi. 28, 30. Inſtitutes iv. title 8, 9.

he perſiſts in it, while he declines to do theſe things, and detains the gain of his injuſtice. But when the injurious offer all theſe things voluntarily, we are bound to be reconciled and to pardon them: which all of us ſhould do the more readily and heartily, that each one ſo often needs to be pardoned, if not by his fellow-creatures, yet by our merciful Creator.

IV. When one obſtinately perſiſts in his injuries and will not deſiſt from his deſigns upon admonition, nor repair damages done; or refuſes to perform what we have a perfect right to demand; not only our private intereſts, but the common intereſts, and ſafety of all requires, that the injuries intended ſhould be repelled by violence, and reparation of damage and whatever elſe is due to us by a perfect claim ſhould be obtained; and even ſome further evil inflicted on him, by the terror of which both he and others be reſtrained from the like practices.

This violent defence or proſecution of our rights is war. But as one grand view of conſtituting civil power was this, as it is known to all, that the controverſies of citizens ſhould be decided by impartial judges, and thus the miſchiefs prevented which might ariſe from mens redreſſing themſelves under freſh impreſſions of injuries; very different rules of violent defence or proſecution muſt obtain according as men are either in natural liberty or under civil government.

Wars are divided into *public* and *private*. The

former are such as are undertaken by a *state*, or in the name of a body of people: *private* wars are those among private persons. The public wars are divided into the *solemn*, or these authorized on both sides by the supreme powers of states, upon some specious shews of right; and those so authorized only on one side: such as the wars made upon bands of pirates or robbers, or citizens making insurrections; or what are called *civil wars*, between different parties in the same state contending about some rights of the people, or of the government.

We first treat of the *private wars* of men in natural liberty. And the same reasonings hold in *public wars;* since sovereign states and princes are with respect to each other in the same condition of natural liberty.

V. We have already shewn that wars both public and private are sometimes lawful, nay necessary for the common safety. Nor do the scriptures prohibit them in all cases: as they plainly authorize civil power, give to magistrates the †*power of the sword*, and praise some eminent heroes in war.

In both kinds of war three points are to be settled: the *just causes*, the *term of commencing*, and the *term of ending them*, or the sum of our demands in war.

† The *jus gladii* is well known to include both the power of capital punishment, and of defending a country by arms, among the Romans to whom the apostle writes, ch. xiii. 4. See also Heb. xi. 32, 33, 34. 1 Pet. ii. 13, 14.

When we ſpeak of theſe three in the wars of particular perſons, they are to be differently determined according as the parties live in natural liberty or under civil government.

But we muſt always remember, that tho' we have received the very greateſt injuries from any perſon, yet we ought to maintain good-will toward him, and even deſire his happineſs, as far as it is conſiſtent with that of better men and of the community. All clemency conſiſtent with theſe ends, toward even the moſt injurious, is what every man's heart muſt approve. When therefore any injury is deſigned or done to us, we ſhould try firſt all gentler methods, either to prevent it, or obtain reparation of damage and ſecurity for the future. Nor ſhould we judge that an injuſt enemy has forfeited all his rights, or that every outrage againſt him is juſtifiable. That violence alone is juſt which is neceſſary, or naturally conducive, to repell the injury, repair the damage, or obtain ſecurity for the future. Any cruelty not requiſite for theſe ends is plainly criminal and deteſtable; as it occaſions grievous ſufferings to ſome of our fellows, without any neceſſity for the intereſts of others; and is a precedent to like cruelties on other occaſions, even toward thoſe who have a juſt cauſe in war.

VI. THE *juſt cauſes* of beginning war in natural liberty are any violation of a perfect right. There could be no ſecurity in life, none of our rights could

be ſafe, were we prohibited all violent efforts againſt the injurious, and they allowed to paſs with impunity. By a frequent repetition of even ſmaller injuries the greateſt wealth muſt ſoon be exhauſted: and life muſt become intolerable to innocent men if they are thus expoſed to the perpetual inſults of their petulant or inſolent neighbours. Humanity may often perſuade a good man to overlook lighter injuries, which can eaſily be repaired; if eſpecially, they proceeded from ſome ſudden guſt of paſſion of men who in the main parts of their character are good, and will ſoon repent of it. Yet no man can juſtly claim ſuch patience toward himſelf from others. There are ſome more rare caſes in which perhaps it may be juſt to make war before any injury is done or attempted: but of theſe hereafter.*

When therefore any of our perfect rights are violated, either by deſtroying or damaging our goods, or refuſing what we have a perfect right to claim; or when a like injury is done to any innocent neighbour; it is lawful, nay often honourable by force to compell thoſe who oppoſe us or our neighbour in obtaining our rights, to deſiſt from theſe injuries, and to perform whatever is due to us. We may ſeize the particular goods we have a claim upon; or if we cannot find them, ſeize any goods of the enemy ſufficient to compenſate all that's due to us. And in computing this,

* Book III. ix. 2.

we ſhould include all our labours, and loſſes or expences occaſioned by the injury. Nay we may proceed further by way of puniſhment, or obtaining ſecurity for the future, as far as a wiſe arbiter will judge neceſſary: [but of this preſently.]

In civil ſociety indeed, theſe injuries alone juſtify the violence of private perſons againſt any fellow-ſubject who is amenable to laws, which may occaſion an irreparable damage. The warding off, or the repairing of others ſhould be obtained in a more prudent way by the aid of the magiſtrate. But ſuch as can neither be prevented nor remedied this way, we juſtly may repell with violence. But if any one, who is as to right a citizen or ſubject, renounces this bond; or makes his attempts ſo ſecretly that there is ſmall hope of bringing him to juſtice; we have the ſame rights againſt him as if we were in natural liberty.* Such are all robbers and thieves in the night. Againſt other citizens our remedy muſt be obtained from judges or magiſtrates.

VII. THE term of commencing violence in liberty, is when one either by expreſs declaration or any hoſtile action has diſcovered a fixed purpoſe of hurting us or any innocent neighbour; and will not deſiſt upon admonition. We are not obliged to receive the firſt aſſault; as it may perhaps prove fatal to us: nor need we wait till the injury is executed; which may

* Exod. xxii. 2, 3. and ſome fragments of the 12 tables.

perhaps prove irreparable: and it is generally eaſier to prevent than to remedy. We may therefore juſtly prevent and ſurprize ſuch as have formed and declared ſufficiently their injurious deſigns of hoſtility.

The proper term of commencing in civil life any violence that may be dangerous to others, is when the aggreſſor has brought us into ſuch ſtraits that we can neither retire without danger, nor obtain any aids from magiſtrates or our fellow-citizens.

VIII. The term or bounds beyond which we ought not to continue violence in natural liberty, are when the aggreſſor or the author of the injury either voluntarily repenting, or compelled by force, deſiſts from injuring, and offers compenſation of all damages done, and ſuch ſecurity for the future as any prudent arbiter ſhall judge neceſſary. If he obſtinately refuſes theſe things, we may juſtly obtain them by force. Nay the common intereſt of mankind requires that ſuch as without any plauſible ſhew of right, have done groſs injuries, and given ſuch dangerous example to others, ſhould be puniſhed in ſuch a ſevere manner as may probably deter not only themſelves, but all others from like crimes.

The ſame reaſons which juſtify the inflicting of puniſhments in civil life, juſtify it alſo in natural liberty; tho' in this ſtate we cannot expect that puniſhments ſhall be ſo effectually executed, or ſo prudently regulated. Neither the grounds of puniſhments, nor the reaſons of inflicting them, preſuppoſe civil power

in the inflicter, nor civil ſubjection in the ſufferer.

Under civil governments ſubjects ought not to continue violence after they are ſecured from preſent danger. The reparation of injuries and precautions for the future are to be obtained by the ſentence of a judge, and not by the violence of the enraged parties. All juſt violence ſhould be with a view either to the defence of our rights, or to ſome public advantage. What has not ſuch intention; and is accompanied with hatred of the perſon, and joy in his miſery, is that criminal *revenge*, which is condemned both by the natural and Chriſtian laws.

And further as rights reſpect not only our holding or poſſeſſing, but alſo our obtaining ſometimes from others ſome goods or ſervices: in natural liberty we may uſe violence in purſuit of what is due to us from others, when they refuſe to perform voluntarily what we juſtly demand. But in civil life all ſuch proſecution of our rights ſhould be made by actions in law, either for debts, reparation of damages, or precautions againſt damages aporehended; and theſe matters decided by the wiſdom of magiſtrates and judges: as muſt appear from what was ſaid about the cauſes of war in natural liberty, and the ends of civil government.

IX. From theſe principles it muſt follow that ſuch duels as are often practiſed among us, where the challenger and the perſon challenged meet in a place appointed, intending the death of each other, or what

may occaſion death, cannot be juſtified either in natural liberty or civil ſociety. Reaſon would always teach a far better method of defending and proſecuting our rights; firſt, by committing any diſputed point to arbiters in natural liberty; and if either ſide declined to ſubmit to them, the other ſhould obtain the aſſiſtance of ſuch neighbours as the equity of his cauſe or regard to the common ſafety can engage to his ſide, and make open war in proſecution of his right. As to any reproaches or contumelies; the duel is often a fooliſh, and often too cruel a method of refuting them. The fortune of the combat is often as blind and capricious as any: and death is too grievous a puniſhment for opprobrious words. If one has hurt the character of others, either by falſe reports, or even by divulging inhumanly, without any neceſſity, their ſecret vices; in natural liberty we may juſtly, with the aſſiſtance of friendly neighbours, inflict ſuch public puniſhment as any wiſe arbitrators ſhall deem proper for the crime. And if in this ſtate any one has given full evidence of an hoſtile intention to deſtroy us; we ſhould rather take the ſafeſt way to prevent by ſurprize, or to reſtrain him, in ſuch manner as our own and the common ſafety requires. Nay under civil government, we are not bound to avoid public places, or neglect any buſineſs which requires our appearing abroad, becauſe we know that one deſigns to aſſault us; unleſs either humanity or a regard to our ſafety move us to it. And if we are unjuſtly attacked while we are

employed in our own lawful buſineſs, we may juſtly defend ourſelves even by killing the aggreſſor: and doing ſo is often a very uſeful ſervice to mankind. All this may be done without any concerted duels.

But if the legiſlator has been ſo negligent of a moſt important matter, as to appoint no ſuitable legal addreſs for the citizens when injured in their characters by calumnies or reproaches; and if that cuſtom prevails, which took its riſe in the moſt barbarous and ſuperſtitious ages, that a man is deemed infamous, and always expoſed to new inſults, and theſe generally approved too, if upon certain reproaches or contumelies uttered againſt him, he does not challenge the author of them; which will be the caſe too with one who declines to accept a challenge from any who imagine they are injured by him. The larger ſhare of this guilt is chargeable on the civil governors themſelves; tho' the parties are not excuſable, eſpecially the challenger. For a good man may generally find a better way of vindicating his character, and even of ſhewing his fortitude, if either there ariſe any public wars, or if he is firſt attacked by violence.

There is indeed one caſe in which concerted duels may be lawful on one ſide: * if a public enemy of our country, of ſuperior power, truſting to the valour of ſome champion on his ſide, offers to grant us reaſonable terms of peace only upon the event of this cham-

* Grotius de Jure Belli, &c. iii. 20. 43.

pion's being defeated by one of our ſide; or will have the controverſy decided according to the fate of ſuch a combat. 'Tis no doubt fooliſh and inhuman to decide controverſies this way, when it might be done by arbitration. But if a more potent enemy will not conſent to any other way; 'tis a glorious action on our ſide, if one to prevent much blood-ſhed expoſes himſelf for his country to this hazard, in which his country has better hopes of ſucceſs than any other way.

CHAP. XVI.

EXTRAORDINARY RIGHTS IN CASES OF NECESSITY, *and the* COMMON RIGHTS OF MANKIND.

IT has been already frequently ſhewn that an immediate ſenſe generally points out and recommends our ſeveral duties; and that there are different degrees of them, in a certain ſubordination, ſome more, ſome leſs honourable; that the latter ſhould give place to the former, when they are inconſiſtent; and that the ſupreme beauty appeared in theſe affections of ſoul which are moſt extenſive, which ſhould therefore controul the narrower: and that in conſequence of this, all the rights of individuals, and all the ſpecial rules of life ſhould be poſtponed to the univerſal intereſt of all. Although therefore theſe practical concluſions called the *ſpecial laws* of nature, which we are ſacredly bound in all ordinary caſes to obſerve, point out what is almoſt continually the virtuous part; yet by an extraordinary change of circumſtances, it may become our duty to act in a different manner; and ſuch ſingular caſes are to be deemed excepted in theſe ſpecial laws. We never ſhould ſpeak thus, that in caſes of ſingular neceſſity, we may juſtly violate the law of nature, or act injuſtly or vitiouſly: ſuch expreſſions are contradictions. But it is truly obeying the law to take the benefit of any exceptions appoint-

ed in it; or to follow the more ſacred law when it derogates any thing from one of leſs importance. Now of all the ſocial laws that is the moſt ſacred, which prefers the general intereſt and ſafety to that of individuals or ſmall parties.

II. But as the ſenſe of every good man muſt ſhew it to be of high importance to preſerve the authority of all the ſpecial laws, and that they ſhould be religiouſly regarded; we cannot be juſtified in departing from their appointment upon any light cauſes: the neceſſity muſt be great and manifeſt which will juſtify it. We muſt not only conſider cautiouſly what preſent advantages may enſue in this caſe from ſuch a ſingular ſtep; or what preſent inconveniences from following the ordinary law; but much more what greater and heavier and more general evils may follow from ſuch a liberty allowed to all. Let us take an example or two, which may illuſtrate other caſes. As the maintaining of veracity and faith in our converſation and dealings is of the higheſt importance to ſociety; as is alſo the maintaining the rights of property, and leaving to each one the free adminiſtration of his own, for the mutual confidence and ſecurity of men in ſociety: the cauſes muſt be of the higheſt nature, ſome terrible evils to be avoided or exceeding great advantages to be obtained which can be allowed to make exceptions from theſe important rules. Nor ought this plea of neceſſity to be extended to lighter matters: for we ſhould conſider all the conſequences,

even of a remoter kind which muſt enſue upon diminiſhing the deep reverence men ſhould have for theſe laws. No caſes therefore but thoſe of the higheſt nature are to be deemed excepted; when evils ſuperior to all theſe evil conſequences are to be averted: and none will reckon among theſe, any ordinary ones of a lighter nature, unleſs he is plainly wicked and impious, void of any conſcience of duty.

'Tis to no purpoſe to argue here, that we are to do nothing vitious for any proſpects of advantage. In this all agree. But the queſtion is, whether ſuch extraordinary conduct be vitious in theſe circumſtances, or not? It ſhould not be matter of heſitation, whether we may abandon the conſcientious part for the advantageous: but whether ſome great utility to enſue don't make ſome extraordinary ſteps lawful or honourable? Nor is it more to the purpoſe to allege, that we ſhould always adhere to the divine laws, and that we are no judges of future events, but ſhould commit them to Providence. Such things are pleaded by ſome very good men, though not very acutely in this point. For the very queſtion is, are not theſe caſes to be deemed exceptions in the divine laws? and made known to us by the ſame uſe of reaſon by which the law itſelf is made known? If we are no competent judges of future tendencies, we are no judges about the ordinary natural laws; which are no otherwiſe diſcovered than by our reaſoning upon the tendencies of certain methods of action, as they appear conducive

to the public intereſt or detrimental: for no man can allege that our ſole rule of life are the impulſes of each particular paſſion which we may generally approve in ordinary caſes.

No doubt wicked ſelfiſh men devoted wholly to their own intereſts or pleaſures will abuſe this plea; but not without ſuch impiety and unfairneſs of mind as would break through any bonds of laws. The paſſionate and revengeful often abuſe the doctrine of ſelf-defence, and that about proſecuting the injurious: but we don't therefore quit this doctrine, and prohibit all violence in defence or proſecution of our rights. Nor ſhould we any more condemn all departure in ſingular caſes from what the ſpecial laws of nature require in ordinary ones. Men ſeem agreed that the common rules of property yield to ſome ſingular exigencies. One may uſe or deſtroy the goods of another without his conſent, when 'tis neceſſary for the preſervation of multitudes, as in the lightening of ſhips in a ſtorm, or blowing up of a houſe to ſtop a raging fire. Nay ſome higher laws give way to ſingular neceſſities. The braveſt and beſt citizens are expoſed to certain death for their country, in ſervices where there can be no hopes of their eſcaping. By drawing a bridge or ſhutting the gates, by which all the citizens have a right to be protected, the braveſt men are ſometimes expoſed to the moſt cruel enemies. Tullus Hoſtilius is renowned to all ages for preſence of mind in delivering a falſe account, by which the Ro-

man people were preſerved. But this doctrine ſo liable to miſapplication needs always the following cautions.

III. First of all: the two general laws about loving God and our neighbour, or of promoting the general good of all, admit of no exceptions: nay in this latter are founded all the exceptions which lie againſt any of the more ſpecial laws. But the external acts of worſhip are not neceſſarily annexed to any one time, and therefore yield to urgent exigencies.

2. The more honourable any perſon's temper is, the leſs apt will he be to allow to himſelf exceptions for any ſmaller intereſt of his own, or to claim any privileges of neceſſity.

3. We muſt bring into account all the effects probably to enſue from any extraordinary ſteps, whether by natural conſequence, or from the unfairneſs or raſhneſs of others. Not that men are to be excluded from every right which injuſt perſons may make a pretence of in improper caſes: but even theſe bad conſequences are to come into the general account, to prevent our allowing exceptions in any but the moſt weighty caſes. So that no man can plead exceptions in lighter ones, without that depravity of mind which would break any acknowledged law, without any ſuch pretence.

4. The more ſacred and important any law is, the greater muſt the cauſes be which can found any exception.

5. Cauſes of a public nature are far more honourable than thoſe of a man's own advantage. A good man often may quit part of his own right; and 'tis often honourable not to take the advantages he might. But he is not thus maſter of the public intereſts, and muſt act according to what the exigence of the times require.

6. No plea of neceſſity will juſtify a man in freeing himſelf from any threatening evil, by caſting the like or greater upon any innocent perſon. This is plainly not ſubſervient to any public utility.

7. Whatever ſmaller damages we caſt on others who do not conſent to ſuffer them gratuitouſly, in order to free ourſelves from any great danger, we are ſacredly bound to repair. To this right in natural liberty, of warding off ſome great danger by actions detrimental to others, there correſponds in civil ſociety an *eminent right in the ſupreme powers*, of which hereafter *.

IV. From the common bond of all with all, by which all mankind are conſtituted by nature one great ſociety, with ſome common laws binding them, there ariſe certain common rights, not ſpecially regarding the utility of any one, or a few, but that of all in general; which therefore every one as he has opportunity ſhould maintain and proſecute. Theſe rights as they obtain alſo in natural liberty, ſhould be conſider-

* Book III. Ch. v. 4.

ed previouſly to thoſe of civil ſocieties. We ſhall give a few inſtances, which will alſo lead us to others.

1. Mankind as a body, and each one as he has occaſion, have a right to hinder any one to quit life without a juſt cauſe, or thus deſert the duties incumbent on him. Suicide ſhould therefore be prevented, or ſuch ſelf-maiming as may make one unfit for the duties of life.

2. There's alſo a common right of all, to prevent certain vitious practices of moſt pernicious example, which yet cannot be ſaid to injure any one perſon more than another: ſuch as monſtrous luſts, procuring abortion, or any other practices which are hurtful to mankind in general.

3. We are likewiſe to hinder any man to deſtroy ſuch goods of his own as may be very uſeful in life, out of any caprice or ill-nature: nay they ſhould not be allowed to periſh of themſelves without being uſed.

4. There's alſo a like common right of one and all, to prevent injuries, and to puniſh ſuch as are done; ſo that by the terror of the puniſhment, others alſo may be reſtrained from like attempts.

5. Mankind have a right alſo to compel any perſon, who has diſcovered any ſecret of great uſe in life, to divulge it upon reaſonable compenſations, and not to ſuffer it to periſh with himſelf; that ſuch as need it may alſo enjoy the benefit.

6. Mankind in general, and every ſociety, may juſtly require it of all ſuch as enjoy ordinary health

and ſtrength, unleſs they otherwiſe have a fund for their ſupport, that they ſhould maintain themſelves by their own labour, and not intercept the liberality or charity of good men; which is due only to the weak who cannot ſupport themſelves. Such ſlothful wretches are to be compelled to labour.

The inſtances we have given are rights of the perfect kind belonging to mankind as a body. Imperfect rights of this claſs anſwer to the general duties of humanity and beneficence (above explained in treating of the nature of virtue) which muſt be left free to the honour and conſcience of men.

CHAP. XVII.

How RIGHTS *and* OBLIGATIONS *ceaſe: how* CONTROVERSIES *are to be decided in* NATURAL LIBERTY: *and the* RULES *of* INTERPRETATION.

OBLIGATIONS ceaſe by three ſeveral ways: by the *paying* or *performing* what was due; by *remiſſion* in favour of the debtor; and by the *failing of the condition.*

Payment may be made either by the debtor himſelf, or any commiſſioned by him, or acting in his name and for his behoof; but it muſt be at the time and place agreed on. Where payment is offered not by appointment of the debtor, nor for his behoof; the creditor is not bound to transfer his right againſt the debtor to the perſon thus offering payment, who may have ſome malicious intention againſt the debtor. What is here ſaid relates only to the delivery of common goods or money, or performing common labours or ſervices, in which 'tis no matter to the creditor who pays him. The caſe is otherwiſe in homages of honour, or ſuch labours as are valued on account of ſingular ingenuity. In theſe no ſubſtitution can be made without the conſent of the perſon to whom they are due.

In money, or goods only regarded by weights, meaſures, or quantities; if two perſons be mutually

indebted to each other in equal ſums, and the days of payment on both ſides come, the debts mutually deſtroy each other: and this is peculiarly called *compenſation*. Nay though the ſums are not equal, yet the debts ſhould be deemed aboliſhed as far as the ſums concur, and the ſurplus only to remain due.

To the ſecond way, to wit, of ſome remiſſion; are reducible all theſe *tranſactions* or bargains agreed to for extinguiſhing diſputed claims: as alſo *delegations*, by which the debtor with conſent of the creditor transfers to him an equivalent debt due to himſelf: as alſo the forgiving of debts and accepting any thing in lieu of them; and laſtly mutual diſſent of the parties, by which the mutual obligations of a bargain are taken away.

3. Under the head of the failure of the condition, is included the *perfidy* of one party in a bargain; which ſets the other free, if he chooſes it, rather than to compel the perfidious to performance: as alſo a *change* of *ſtate;* by which all obligations are made void which were plainly founded upon it: as alſo the *expiration of the time;* which takes away obligations which were to endure no longer: and laſtly *death* takes away ſuch as only reſpected the perſons, and were not deſigned to ſubſiſt to the heirs of the creditor, or affect the heirs of the debtor: and theſe points are generally known from the nature of the buſineſs, or the terms of the contract.

II. In natural liberty controverſies are beſt decid-

ed by friendly conferences of the parties, or the interpoſal of common friends; or by an abſolute *compromiſe* or ſubmiſſion to arbiters of approved characters; and this either as to the ſtrict point of right, or as to the equitable and humane part on both ſides. Every good man would always chooſe to make ſubmiſſions of this latter ſort, and not inſiſt upon the ſtricteſt point of right.

The proper arbiters are perſons of wiſdom, under no ſpecial attachment to either ſide, and who can gain nothing by the deciſion of the cauſe in favour of either party. Such men influenced by no intereſt or paſſion, tho' they be neither wiſer nor better men than the parties contending, yet will more eaſily diſcern what is juſt and equitable. The parties are bound to ſtand to their deciſion, unleſs they find evidence of corruption, ſuch as ſome ſecret contract with one party; or unleſs there be ſuch manifeſt iniquity in the deciſion as muſt plainly evidence ſome fraud or unfairneſs. But if it is only ſome ſmaller inequality or miſtake in the deciſion, upon ſome ſhew of right, by which one party thinks he is wronged, he is notwithſtanding bound to ſubmit to the award.

The arbiters ſhould proceed as judges do, to find out the truth by the acknowledgements of the parties, or by ſigned deeds, or other ſuch documents: and next to cite witneſſes, and interrogate them upon oath; regarding always this, whether the witneſſes be not engaged by intereſt on one ſide; and they

ſhould demand two at leaſt to proceed upon. For though the credibility does not at all increaſe in proportion to the numbers of witneſſes, and ſometimes the teſtimony of one wiſe honeſt man gives full ſatisfaction; yet it would be dangerous to proceed upon the teſtimony of one: as a perſon of great hypocriſy and art and preſence of mind may contrive ſuch a conſiſtent ſtory, that no interrogatories put to him can detect the falſhood of it, or make him contradict himſelf. But when two or more witneſſes, are ſeparately examined, without hearing each others teſtimonies, about all ſuch circumſtances as might have been obſerved by perſons really preſent, (of which a vaſt multitude may occur to a ſagacious judge;) if they either frequently contradict each other; or both always remember the ſame circumſtances, and both always pretend to have forgot or overlooked the ſame circumſtances, they give plain evidence of a concerted fraud. [A complete conſiſtency therefore of two thus examined, gives abundant evidence.]

III. For diſcovering the true intent and meaning of promiſes, contracts, teſtaments, and written laws, the proper rules of interpretation are often uſeful. But they belong rather to the art of criticiſm than to morals; as they are not peculiar to theſe matters.

1. We muſt ſtill remember that ſuch as profeſs to contract with others, and uſe ſuch ſigns as commonly expreſs contracting, are to be deemed bound,

whatever way their mind was then employed: not otherwiſe could their be any faith in commerce.

2. The ſenſe of common *popular words* is to be determined by cuſtom, without regard to original meanings or etymologies; unleſs there appears evidence that they were taken in an unuſual ſenſe.

3. *Terms of art* are to be underſtood according to the definitions of the artiſts.

4. Where the different parts of any deed relate to the ſame thing; the ambiguous or obſcure are to be cleared up by the more plain and diſtinct.

5. If words taken in their ſimple and unfigured ſenſe import ſomething contradictory and abſurd, but not when interpreted as figurative; they are to be deemed figurative.

6. In deeds which convey no right in their prior parts to ſuch as don't alſo conſent to the ſubſequent; the ſubſequent limit the preceeding. This holds in the different parts of teſtaments, and in different deeds made between the ſame parties.

7. There are alſo juſt conjectures of interpretation to be derived from the *ſubject-matter*, the *circumſtances*, *effects*, or *conſequents*. For that is probably the true interpretation which ſuits the ſubject-matter and circumſtances, or which involves no abſurd conſequences.

8. Contracts are beſt explained from knowing the views of the parties; and laws in like manner from the reaſon or deſign of them.

9. We are alſo to regard whether the matter be of a *deſirable* or favourable nature, or on the contrary undeſirable or odious; for accordingly we give a larger or more confined ſenſe to the words.

IV. But where all or any of the contending parties in natural liberty, truſting to their own ſtrength, and each dreading the intereſt or art of his adverſaries in influencing any arbiters they might chooſe, declines to compromiſe; there remains no other remedy than that each defender proſecute his right by violence, with what aid he can get from his neighbours: and by this means multitudes muſt often be involved in great incoveniencies and dangers. Now 'tis probable, that in order to avoid theſe miſchiefs, and to get large ſocieties regulated by the authority of a few of the wiſer ſort, in the deciſion of their debates, and the exerting their united force for the common ſafety of all, men have had recourſe to a political union and a civil power.

THE ELEMENTS OF MORAL PHILOSOPHY.

BOOK III.

THE PRINCIPLES OF OECONOMICS AND POLITICS.

CHAP. I.

Concerning Marriage.

WE have in the former book treated of the rights and obligations of that *ſtate of liberty conſtituted by nature*. We proceed to the *adventitious ſtates*, founded upon ſome human deed or inſtitution.

Theſe ſtates are either *domeſtic*, regarding the utility of a few, ſo many only as can ſubſiſt in one family; or *public*, reſpecting the utility of a whole nation or ſtate, or even of many ſtates.

Oeconomics treat of the rights and obligations in a family; the chief points of which are delivered in theſe firſt three chapters. There are many other adventitious ſtates of perſons united in ſome narrower communities or corporations included within ſome political body, and ſubject to it; of which there are innumerable multitudes, which are not under the cogniſance of philoſophy.

II. ALL kinds of terreſtrial animals muſt have ſubſiſted only for one age, if nature had not conſulted their prſervation by a difference of ſex, a deſire of offspring, and a tender care of it till it can ſubſiſt by itſelf. In the brute animals nature has done little more; as their young can be ſufficiently preſerved and reared by the care of their dams, ſince they need ſcarce any inſtruction for their ſimple ways of life. Nature finds all the clothing and armour they need; and the earth of itſelf ſends up their food in abundance. But for the improvement and even preſervation of human life a multitude of arts and inventions are neceſſary; as their bodies are more delicate, needing nicer food, and clothing, and other care; and their minds capable of many delightful arts. Their offspring therefore, by the wiſe order of nature, continues far longer tender and infirm, needing the conſtant care of the adult; that thus they may be more eaſily governed and inſtructed in the various arts of life, before they acquire untractable ſtrength.

Now as the mothers are quite inſufficient alone for

this neceſſary and laborious task, which nature alſo has plainly enjoined on both the parents by implanting in both that ſtrong parental affection; both parents are bound to concur in it, with joint labour, and united cares for a great ſhare of their lives: and this can never be tolerable to them unleſs they are previouſly united in love and ſtable friendſhip: as new children alſo muſt be coming into life, prolonging this joint charge. To engage mankind more chearfully in this laborious ſervice nature has implanted vehement affections between the ſexes; excited not ſo much by views of brutal pleaſure, as by ſome appearances of virtues, diſplayed in their behaviour, and even by their very form and countenances. Theſe ſtrong impulſes plainly ſhew it to be the intention of nature that human offſpring ſhould be propagated only by parents firſt united in ſtable friendſhip, and in a firm covenant about perpetual cohabitation and joint care of their common children. For all true friendſhip aims at perpetuity; there's no friendſhip in a bond only for a fixed term of years, or in one depending upon certain events which the utmoſt fidelity of the parties cannot inſure.

III. This natural love of the ſexes, and equally natural love of offſpring, ſhew that Plato and ſome other excellent writers are juſtly cenſurable, for departing too audaciouſly from nature, in appointing their ſtates to be ſupplied in new ſubjects by children unknown to both the parents; and this in order to pre-

vent ſome evils * which may be prevented in a much more eaſy and gentle manner. For never could any laws or inſtitutions have ſuch influence, that perſons quite uncertain about their offspring, and hence not influenced by the natural affection, would take a proper care of the young. Or if they were compelled effectually, the labour would be moſt diſagreeable to them, which to parents aſſured of their own offspring is light and delightful. And further while their offſpring is unknown, men want one of the ſtrongeſt incitements to all diligence and induſtry. Nay further Plato's ſcheme, without any ſufficient reaſon or criterion that one can underſtand, is only calculated for the happineſs of the few finer ſpirits; while the plurality are ſubjected to a miſerable ſlavery.

Nay further; theſe inconveniencies he dreads ſo much from each one's knowing his own children, might be prevented another way, by proper laws and pnblic inſtitutions about education, teſtaments, and ſucceſſions. Nor can we aſcribe the factions which often tear ſtates to pieces to our knowing the ties of blood; as one may eaſily ſee in all nations. He ſhould

* See Plato's ſcheme in his books *De Republica*. The evils avoided by his ſcheme, are avarice, and injuſtice; vaſt eſtates, and the attendant power and influence, deſcending to worthleſs heirs; the employing mens affections upon the contracted ſyſtem of a family or two, which otherwiſe might be extended to the whole ſtate: and thence many diſſentions and factions.

alſo have prevented all particular friendſhips; or ſhewn that men have much ſuperior ſagacity in the choice of friends or of ſtate-parties, than he allows them about the education of children, or the love of kinſmen, or in making their teſtaments.

As to the apprehenſion of danger from this, that many very weak men by means of the tender parental affections come into great wealth, 'tis without ground. The offspring of the weak is frequently very vigorous; and that of the vigorous weak, both in mind and body. Nor is it neceſſary for any ſtate that all its members ſhould be either robuſt or ingenious. And ſometimes the fineſt genius is lodged in an infirm body.

IV. We muſt not therefore through fear of a few inconveniencies counteract what nature has ſo ſtrongly recommended: but rather look upon all ſuch deductions of reaſon, as ſhew how a faithful friendſhip may be maintained in wedlock, for the proper education of offspring, as ſo many ſacred laws of nature. Men ought to reſtrain not only all monſtrous luſts, as outrages againſt God and nature, but alſo all diſſolute procreation without any proper covenant about a friendly ſociety for life. For if ſuch indulgence were allowed to all, it muſt deſtroy both the bodies and minds of the youth, produce a race deſtitute of all paternal aſſiſtance, and expoſe the incautious mothers to infamy, poverty and a perpetual courſe of debauchery, without any hopes of ever attaining any reputable ſtate in life. It were to be wiſhed that an equal infamy at-

tended the other ſex, the common authors of or ſolicitors to ſuch vices.

Such adult perſons as have a ſufficient ſtock both of wealth to ſupport a family in their condition of life, and of prudence to govern it, ſeem obliged to marry, unleſs they are hindered by ſome important offices inconſiſtent with the cares of a family. It would be diſhonourable for one without a weighty cauſe to decline his ſhare of the cares and ſervices requiſite for the preſervation of the human race.

V. The chief articles in this covenant are theſe. 1. "That the woman be faithful to the man in cohabiting with no other;" as it muſt be the greateſt injury to impoſe upon him an adulterous offspring, for heirs to his fortune, and objects of that affection which is naturally due only to his own.

2. The ſecond is, "that the husband ſhould be "equally faithful to the wife." For it is a natural iniquity that the wife's conjugal affection, and all her cares and fortune, ſhould be devoted to one man and his offspring; while the affections of the huſband are allowed to be intercepted by, or diſperſed among ſeveral women and their children, and along with it his fortune.

Simultaneous polygamy is not to be allowed to men, not only on account of the inequality or iniquity now mentioned, but becauſe it alſo deſtroys all friendſhip in marriage; muſt be the cauſe of perpetual contentions; muſt tempt women ſo injuriouſly treated into

adulteries: muſt corrupt the minds of men with wandering luſt, deſtroying their natural affection to their children; and muſt occaſion to ſome an offspring too numerous, which therefore will be neglected, and be void of all ſenſe of duty to ſuch diſſolute parents. And further ſince Providence preſerves the numbers of males at leaſt equal to that of females, if 'tis allowed to men to have more wives at once, many muſt be excluded altogether from marriage or having offspring; and thus be free from theſe tender bonds which chiefly civilize and unite men in ſociety: nor does polygamy contribute to make nations more populous, but has rather the contrary effect.

3. The third article is, that perſons married ſhould by a perpetual union of intereſts and purſuits, conſult the proſperity of their family, and chiefly the right education of their common children, and the improving their condition as they have opportunity.

That we may be the better fitted for obſerving theſe articles, from our infancy we ſhould be inured to modeſty and chaſtity; an high ſenſe of which is deeply infixed by nature in the fineſt ſpirits. All obſcenity or laſciviouſneſs in diſcourſe or behaviour is deteſtable; as it relaxes theſe bonds of modeſty by which the young, and women eſpecially, are reſtrained from expoſing themſelves to all infamy and miſery.

4. The fourth article is, "that the bond be perpetual, to end only by death." This is neceſſary to make marriage a ſtate of friendſhip; as alſo generally

for the right education of children, who are ſucceſſively born to us for a conſiderable part of life; and this laſting duty or charge is impoſed by nature equally on both parents. It would alſo be moſt inhumane to divorce or ſeparate from a faithful and affectionate conſort for any cauſes which include no moral turpitude; ſuch as barrenneſs, or infirmity of body; or any mournful accident which no mortal could prevent, and which muſt be equally afflicting to the perſon abandoned, the death of all the common children.

As to any proper power, or right of commanding, veſted in either of the parties, it ſeems oppoſite to that tender affection the ſpring of marriage; which rather points out an equal friendly ſociety. Nor ſeems there any other reaſon for giving any ſuperiority to the huſbands, except this, that men are generally more fit for managing the more important buſineſs of the family, to which the leſs important within doors ſhould give place.

The four articles above-mentioned ſeem ſo neceſſary, that no covenants of the parties in oppoſition to them can be valid *. Marriage therefore may be

* If any one in this matter inſiſts that ſimultaneous polygamy was allowed in ſome civilized nations; let him remember that ſo were alſo human ſacrifices, and a certain ſort of ſlavery manifeſtly iniquitous and inhuman, in far more civilized nations. And tho' a plurality of wives was allowed by the Jewiſh law; yet a far purer inſtitution informs us, that it was permitted for *the hardneſs of their hearts*; or only

defined "a covenant between a man and woman about "perpetual faithful cohabitation and joint care of "their common offspring."

VI. The impediments of marriage are either such as are deemed to make the contract from the first void; or, afterwards make void a valid contract. Of the former class some are natural and some moral.

Among the natural impediments, beside a manifest bodily weakness rendering one unfit for marriage, may be reckoned also some grievous disorders and miserable incurable diseases, inconsistent with a friendly society, or excluding all hopes of offspring that can live. Such as idiotism, and perpetual madness, leprosy, and some other diseases. Very advanced years of either side may justly be deemed to make void a marriage with one in the bloom of life. But if a couple both well advanced in years, covenant about a constant cohabitation, there's nothing blameable in it. A third impediment is, when either party is so young that they cannot have attained that use of reason which is necessary to their binding themselves by any contract. For it would be most absurd that persons who because of their immature years are deemed incapable of binding themselves in any other matter, yet should be

allowed to pass with impunity, but not approved. The *concubinage* both in Heathen Rome and under the Christian Emperors was allowed only to such as had no wives, and was a marriage naturally lawful. See *Heineccius' Antiquities*, in the appendix to lib. 1. c. 38 and the following ones.

deemed capable of it in this, which is far more important than any other, and requires greater judgment.

The moral impediments which make void the contract from the firſt are *prior contracts* with others, and *too near conſanguinity* or *affinity*.

As to the former: if two perſons both apprized of the prior contract with another join in marriage, the marriage ſhould be deemed entirely void; and both parties ſhould be ſeverely puniſhed. Where one of the parties was not apprized of the contract; the caſe of this perſon is ſo favourable, that the marriage confirmed by cohabitation ſhould not be made void unleſs at the deſire of this perſon: even as in other contracts, ſubſequent real rights take place againſt prior perſonal ones: but the guilty party deſerves ſevere puniſhment. And that there may be no room for ſuch frauds even after complete marriages, every ſtate ſhould take care that all marriages intended ſhould be previouſly adverti ſed, and ſuch as are celebrated alſo be divulged in the moſt public manner.

As to *conſanguinity* invalidating marriages, there are higher debates. Among parents and children in the *direct line*, the law of nature ſeems to prohibit all marriages; not only on account of a conſiderable difference of years, but becauſe the conjugal affection and intimacy ſeems quite inconſiſtent with that reverence implanted by nature toward parents and confirmed by education. As to the inter-marriages of kin-

dred in the *tranſverſe line*, or collaterals, the natural reaſons offered by ingenious men don't ſeem concluſive to prove ſuch marriages pernicious or impious. But as we find that many nations who derived nothing from the * Jewiſh laws, held the ſame marriages of collaterals inceſtuous and impure; 'tis not improbable that they have been prohibited by ſome poſitive divine law in the earlier ages of the world; and that ſome veſtiges of this law was preſerved in many nations. The intention of this law has probably been to diffuſe further among many families that good-will and endearment which frequently ariſes from conſanguinity and affinity. The Deity may alſo have had in view ſome other advantages to human offſpring to ariſe from ſuch intermixtures of different families.

By the Roman law, and the cuſtoms of all Chriſtians, marriage is prohibited to all within the *fourth degree*. And the degrees are thus computed. Perſons a-kin have had ſome common parent: and as many generations as have interveened on both ſides from this ſtock, ſo many are the degrees. In like manner a man is prohibited to marry any ſuch kinſwoman of his former wife, as of his own; to wit, within the fourth degree. The canon law retaining the ſame words, has yet extended the prohibitions much further; as it computes the degrees according to the generations in one of the lines only; and by the long-

* See Levit. xviii. and Tacitus' Annals, 12. 5. Digeſt. 33. t. 2. l. 17. and laſt, and lib. 39, l. 53. and Grotius, ii. 5. 12.

er of the two, if they are unequal: and this prohibits all marriages within the ſeventh degree of the civil law.

VII. The cauſes which break off a valid marriage are, any violation of the eſſential articles: ſuch as adultery, obſtinate deſertion, capital enmity or hatred, and ſuch groſs outrages as take away all hopes of any friendly ſociety for the future. When a marriage is diſſolved for ſuch cauſes, the guilty party and the aſſociate in the crime deſerve the higheſt puniſhments; as theſe injuries in marriage do greater miſchief, and cauſe deeper diſtreſs than ſtealing or robbery, for which capital puniſhments are inflicted. The innocent party ſhould be allowed to marry again: for it would be ſtrangely inhumane becauſe one has ſuffered injury, that the law ſhould inflict another hardſhip, by depriving them of a new marriage and offspring. Nay if the guilty parties are allowed to live, they ſhould not be hindered from marrying, except it be with the partners of their guilt. They ſhould rather be obliged to marry perſons equally infamous with themſelves.

The prohibitions in the goſpel of all divorces except in the caſe of adultery ‡ ſeem *elliptical*, as thoſe which prohibit all uſe of oaths. They only condemn all the cauſes aſſigned by the Jewiſh doctors, except that one. The apoſtle Paul § expreſsly allows an-

‡ Matth. v. 32. Luke xvi. 18. § 1 Cor. vii. 15.

other, and that for manifeſt reaſon, to wit, obſtinate deſertion.

The duties of perſons married conſiſt chiefly in a faithful and conſtant affection, ſweetneſs of manners, and prudent care of their families; and to this purpoſe 'tis neceſſary they improve their minds in all virtue; eſpecially in meekneſs and calmneſs of temper; that they may reſtrain ſuch paſſions as their family affairs will be apt to excite. Without theſe virtues a continual ſociety and community of all things can never be tolerable. As to the ways of improving their fortunes, this they muſt learn from other arts, and not from philoſophy.

CHAP. II.

The DUTIES *of* PARENTS *and* CHILDREN.

AS human offspring remains for a long time infirm, incapable of preſerving itſelf, needing the conſtant care of others, both for preſervation and inſtruction in theſe arts and manners which are neceſſary for life; nature has plainly impoſed this charge upon the parents by that ſingular affection implanted in them. Nature therefore muſt have deſigned that parents ſhould aſſume all the power which is requiſite for the diſcharge of this truſt, and ſubjected children to it; while at the ſame time by this tender affection ſufficient precaution is taken for the childrens obtaining their liberty as ſoon as they can ſafely enjoy it; ſince without it they cannot be happy, which is the point that parents are moſt ſolicitous about.

The want of judgment in our immature years, and the tender parental affection, the two only foundations of parental power, ſhew that it cannot be perpetual or during life; but muſt expire as ſoon as children grow up to mature ſtrength of body and mind. And yet the parental affection will always remain, exciting parents to all kind offices, when their children need their aſſiſtance or counſel.

The ſame conſiderations ſhew that this power can-

not be extended to any of the more grievous puniſhments, ſuch as cannot be requiſite for education in ſuch tender years: much leſs can it extend to life or liberty. A parent has no right to ſell his child to perpetual ſlavery, or to lay any burden upon it beyond the value of the neceſſary and prudent expences of its education.

II. THIS parental power belongs alike to both parents, only that in domeſtic affairs the power of the father is a little ſuperior. But if he is dead or abſent, it is wholly veſted in the mother.

'Tis trifling to found this power merely in generation *, or to follow ſome law-maxims about the goods formed by our labour out of our own materials, or other acceſſions of things animate or inanimate, which have no uſe of reaſon or no capacity of holding any rights. Both the bodies and ſouls of children are formed by the divine power, that they may, as they grow up, arrive at the ſame condition of life, and an equality of right with ourſelves, though for ſome time they muſt be governed by the wiſdom of others. For children may have property, and other rights, quite independent of their parents; who ſeem to have no other power over any goods conveyed to their children by others than that of tutors or curators. Whatever parents abandon this guardianſhip of their children commited to them by nature, either by expo-

* This is deſigned againſt Hobbes and Filmer.

ſing or entirely neglecting them, forfeit alſo the parental power connected with it: and any one acquires the whole parental power who takes care of ſuch children.

Parents are moſt ſacredly obliged to provide for their children all the neceſſaries of life, and even to improve their condition as much as they can; and above all to form their manners to all virtue by inſtruction and example: for without this their lives muſt be miſerable and infamous, tho' in the greateſt affluence.

What parents expend on children who have no ſtock of their own, is juſtly preſumed to be donation: and it would be inhumane in parents, who are not in great diſtreſs, to charge food, cloathing, and neceſſary education, as a debt upon their own children. But if the parents are in great diſtreſs, or if any one of their children have a ſtock derived from ſome other friend, parents may juſtly ſtate ſuch an account with their children, and exact payment from them of all the prudent expences made upon their education; and children in this caſe are bound to make ſuch payment either by their labours or otherwiſe. Although therefore from the common affections of parents we juſtly conclude, that their private fortunes are acquired for their children as well as themſelves; whence appears the right of children to ſucceed to the inheritances of their parents; yet children are not to look upon themſelves as leſs bound to gratitude on this account: nay

they are rather the more bound. For the more firm and diſintereſted any affection is, and the more deeply it is rooted in the perſon's nature, the more it is to be valued, and the ſtronger is our obligation to gratitude.

III. PARENTS may acquire by civil law a further power over their children, as the law commits power to any magiſtrates. For civil power having different foundations and greater ends, extends beyond the parental. And children, as they have from their birth enjoyed protection and the other advantages of a civilized life in a ſociety conſtituted for the good of all, are plainly bound to perform to the community on their part * all that's due from good citizens; and particularly to preſerve that conſtitution, and tranſmit the ſame to future ages. Minors therefore may juſtly be delivered as hoſtages, or be obliged to military ſervices of the greateſt danger in great exigencies.

IV. CHILDREN even when adult owe all reverence and gratitude to their parents, not only in return for benefits received, which ſcarce any duty of theirs can ſufficiently compenſate; but alſo out of regard to God, by whoſe providence it was ordered, that we deſcended from ſuch parents, united with them in ties of blood and natural affection, and an habitual reverence from our cradles. They ought therefore to bear with patience any weakneſſes or froward humours of aged

* See Book II. ch. xiv. 2. of obligations reſembling thoſe from contracts: and the following ch. v. 2.

parents, as the parents long bore their childiſh follies. Particularly 'tis the duty of children to conſult the ſatisfaction of their parents in entering into marriage; ſince the parent is alſo deeply concerned in this important ſtep; by which their children enter into a ſtrict ſociety for life with others, from whence muſt proceed grandchildren to their parents, to ſucceed ſometimes to their names and fortunes, and always to their tendereſt affections.

After the proper parental power expires, there often ſucceeds that of the *head of a family;* which is of ſuch extent as the domeſtics make it by their own conſent expreſs or tacit, by voluntarily continuing in, or entering into, a family, where they knew ſuch a degree of power was aſſumed.

CHAP. III.

The RIGHTS *of* MASTERS *and* SERVANTS.

WHEN mankind were conſiderably multiplied, there would be many who had no other fund of ſupport than their labours; and others of greater opulence, who for their eaſe would need much of the labours and ſervices of others. And hence the relation of maſter and ſervant would ariſe, founded on ſome contract. Nor is it of conſequence whether ſuch contracts at firſt were for life, or only for a certain term: ſince excepting the point of duration, the rights and obligations were the very ſame. The points following are of more conſequence.

1. The labours of any perſon ſound in body and mind, are of much more value than the bare ſimple food and clothing of a ſervant; as we plainly ſee that ſuch can purchaſe all this by their labours, and ſomething further for the ſupport of a family, and even for ſome pleaſure and ornament. If any one therefore has incautiouſly inſiſted for no more in his contract; yet as the contract is plainly onerous, he has a right to have this inequality redreſſed *.

2. Where the labours were not ſpecified, the ſervant is deemed to have engaged only for ſuch as men

* Book II. xii. 4.

of humanity in ſuch ſtations commonly exact from their ſervants; and to have ſubmitted only to ſuch coercion of his maſter as is neceſſary for the good order of a family, if he ſhould neglect his work or miſbehave. But he retains all other natural or acquired rights.

3. If indeed the cuſtom is known to have obtained, that heads of families aſſume a ſort of civil power over their domeſtics; the ſervant is juſtly deemed to have conſented to this alſo, as far as it is managed conſiſtently with humanity. The ſervant is bound to perform his work; but retains all the rights of ſubjects under civil government; particularly all ſuch as are naturally unalienable: and may juſtly defend them, even by violence, againſt any invaſions of them by his maſter.

4. Where the ſervices have been ſpecified in the contract, the ſervant is bound to no other. Nay tho' they were not, and the contract was perpetual or for life, yet the maſter cannot transfer him to another without his own conſent; ſince 'tis of high importance to the ſervant what maſter he is ſubjected to, and in what family. And for the children of ſuch ſervants they are all born free.

II. HITHERTO we have treated of ſervice founded on contract. But there is a far worſe kind, to wit, of thoſe who for ſome great damage done, which they can no other way repair; or on account of ſome great

crime, are adjudged by way of punishment unto perpetual labours to others.

And yet even in these cases, they don't lose all the rights of mankind, but only such as are naturally fit to compensate the damage, or are necessary to give security to the public against like injuries for the future. If the lives even of the worst criminals are spared, after they have endured all such public punishments as the safety of society may require, 'tis unjust to treat them with any further cruelty; provided they are willing to perform the labours they are condemned to. And they have a right to defend themselves even by violence, against new injuries, or violations of any rights still remaining to them. But as slavery of this kind is constituted solely for the behoof of others; the master may transfer to another such a slave without his own consent. But no cause whatsoever can degrade a rational creature from the class of men into that of brutes or inanimate things, so as to become wholly the property of another, without any rights of his own.

Nations in other respects not barbarous, condemned all captives in war, into this most miserable condition; establishing an inhuman law even against themselves, and strangely conspiring to subject themselves and their posterity, upon many very possible contingencies, to the most miserable and ignominious treatment. Upon which subject the following maxims seem just.

1. Whoever makes war without a juſt cauſe acquires no right by ſuch violence, over either perſons or goods taken, which he can uſe with a good conſcience, though he may detain them with external impunity, as we ſhall ſhew hereafter *.

2. One who has a juſt cauſe, yet ſhould ſet juſt bounds to his demands: nor can he demand any thing from the conquered except either under the name of *puniſhment*, *reparation of damage* done, or *precaution* againſt future injuries †.

3. None are puniſhable but ſuch as either by ſome action or omiſſion, contrary to their duty, have occaſioned and contributed toward theſe injuries done to us by the war. And 'tis plain, this is ſeldom ever the caſe of the far greater part of the adult ſubjects of any ſtate, who are capable of a ſhare in public affairs; not to ſpeak of women and children, who make three fourths of every people, and ought to be deemed joint proprietors with the heads of families in their private properties. And tho' all heads of families payed tributes toward maintaining the war; this can't be deemed a crime in them, as they were under the immediate diſtreſs of their governors, who would otherwiſe have levied theſe taxes by force, and puniſhed the

* See the following ch. ix. 4.

† See Book II. xv. 5, 8. On this ſubject of ſlavery many juſt reaſonings are to be found in Mr. Locke's 2d book on government; and Mr. Carmichael's notes on Puffendorff, Book II. ch. iv.

refractory. Grant they had consented to the war, following some specious reasons published by their governors; their ignorance generally was invincible: nor was their consent of such importance as to cause the war, nor would their dissent have prevented it. Nor can we ever suppose that any political union can transfer the guilt of one person upon another who did not concur with him.

4. Nay the very soldiers, all such at least as had no share of or influence in the public councils, as they enlisted upon presumption of being employed only in just causes, or persuaded by such reasons as their governors publish; they are excusable entirely, both on account of ignorance and necessity. To men once enlisted 'tis a capital crime to disobey orders. It must therefore be exceedingly inhuman to inflict any thing severe upon them by way of punishment, provided we can be secured against further dangers from them: and this we always may be from captives, by keeping them in our own country, and mixing them with our citizens or our colonies, without depriving them any way of their liberty. All this not only humanity will recommend, but a consideration of the uncertain accidents of war, and the inconstancy of fortune.

5. Under pretence of repairing damages, the conqueror can demand nothing from the innocent citizens, except upon the same grounds that one demands it for damage done by another's slaves or cattle, to

wit this, "that, whoever contrives or procures any "thing for his own utility, by which others without "their fault receive hurt, is bound either to repair "the damage, or deliver up the goods, or contrivance "whatever it was, to the perſon injured." The conqueror may therefore juſtly demand from the conquered citizens, that they abandon their injuſt governors the cauſes of the war; or that they oblige theſe governors to repair the damages; or that they repair them themſelves; and theſe three ſhould be left to their choice. This holds moſt evidently as to theſe firſt citizens who at firſt conſtituted the government; or thoſe who have great power in the ſtate, by whoſe council the war was undertaken; or who have it in their power to reſtrain their princes in their injuſt deſigns. As to others who are of no weight in public affairs, their plea againſt even compenſating of damages is more favourable.

6. But as ſoon as the defeated have repaired all damages, or the conqueror has obtained reparation to himſelf by force and military execution; and has alſo obtained ſecurity againſt future injuries, ſuch as a wiſe arbiter judges ſufficient, he has no further demand upon the innocent citizens. Now he may obtain all this in a much eaſier, and more merciful way, without depriving the innocent citizens of their liberty. The governors are in the firſt place bound to repair all damages, and the citizens only in the ſecond place when their governors cannot do it, or decline it.

7. The children of ſlaves of any ſort are all born free *, as we ſhewed above.

8. Whoever purchaſes a perſon for a ſlave, or detains him as ſuch, is always bound to ſhew that this perſon was deprived of his liberty upon ſome juſt ground. The original proprietor of the matter in queſtion is always at hand: ſince nature made every man maſter of himſelf, or of his own liberty. 'Tis plainly therefore incumbent upon the violent poſſeſſor to prove his title; and not upon the perſon deforced, and claiming his liberty, to prove a negative, that he did not loſe, or forfeit his liberty. [Without a previous inquiry of this kind no man can in this caſe be a fair purchaſer.]

9. Nor is it juſtly pleaded here, that captives would be put to death if they could not be made ſlaves and ſold as ſuch: and that therefore they owe their lives and all to the purchaſers. But ſure no higher ſort of title ariſes to the purchaſers in this caſe, than to ſuch as have done any other uſeful ſervice of equal importance; ſuch as, reſcuing a fellow-citizen from robbers or murderers, ranſoming them from pirates, curing diſeaſes or wounds which without the aid of art would have been deadly. All ſuch perſons ſhould have all expences refunded to them, and a generous compenſation for their labours and

* Book II. xiv. 3. See Mr. Locke on govern. Book II. as alſo Hooker's *Eccleſ. Polity*, and Sidney on *Government*.

art. But whoever alledged that they could claim the perſons they thus ſerved as their ſlaves?

III. As it is the duty of ſervants who are juſtly ſubjected to others, to perform their work with diligence and fidelity; regarding God the common maſter of all, who is ever preſent with us: ſo 'tis the duty of maſters to exact no more from ſervants than what they have a right to, and to abſtain from all cruelty and inſolence; as it becomes thoſe who remember that all are of one blood, and naturally allied to each other, and that fortune is inconſtant, that the ſouls and bodies of ſervants are of the ſame ſtuff with our own, and of a like conſtitution; and that all of us muſt give an account of our conduct to God the common Parent and Lord of all.

CHAP. IV.

The ORIGINAL *of* CIVIL GOVERNMENT.

HAVING finiſhed the account of domeſtic ſociety, we proceed to ſhew the origin and rights of civil ſociety, [in which 'tis univerſally underſtood, there is included a right veſted in ſome perſon or council to decide all controverſies ariſing amongſt large numerous bodies, to direct the actions of all for the common intereſt, and to compel all by force to obey their orders.] By the aſſociations already explained, if all men were faithful in diſcharging their duties, human life muſt have ſufficient affluence and pleaſure. It muſt therefore have been ſome fear of miſchiefs to ariſe either from the weakneſs or vices of men, which has moved them to ſubject themſelves to civil power. But we muſt not therefore, call civil ſociety *unnatural* or contrary to nature. For whatever that reaſon, nature has endued us with, ſhews to be neceſſary or very conducive to obtain thoſe advantages we naturally deſire, or avert the contrary evils, muſt plainly be deemed natural to a creature endued naturally with reaſon and forethought. Men therefore are juſtly called "creatures fitted by nature for civil polity."

Let us ſuppoſe all men ſo juſt that none would do to others any thing he judged injurious, but that they are pretty liable to miſtakes about their own and o-

thers rights, through their ſtrong ſelfiſh deſires, and the biaſs of impetuous paſſions: this would frequently occaſion controverſies among them. Let us further ſuppoſe that many honeſt men are yet too ſuſpicious, ſo that they won't ſubmit their diſputes to the arbitration of others, each fearing perhaps the intereſt of his adverſary with the arbiters, or his art in ſeducing them: if there be added to this, too much confidence on both ſides in their own force, and obſtinacy in opinion; their controverſies in natural liberty can be decided no other way than by violence and all the miſchiefs of war.

But there's ſomething in our nature which more immediately recommends civil power to us. Some of our ſpecies are manifeſtly ſuperior in wiſdom to the vulgar, as the vulgar are often ſenſible. Theſe of ſuperior ſagacity, as all muſt own, are capable of contriving and inventing many things of conſequence to the common utility of multitudes, and of pointing out more effectual methods for each one to promote his own intereſt, if their directions are complied with. If to theſe abilities be added alſo eminent moral virtues, goodneſs, juſtice, fortitude; the appearance of ſuch excellencies obtains the truſt and confidence of all, and kindles their zeal to promote ſuch perſons to honour and power; as they conclude that under their direction all may obtain every ſort of proſperity. 'Tis highly probable therefore that not only the dread of injuries, but eminent virtues, and our natural high ap-

probation of them have engaged men at firſt to form civil ſocieties.

II. But if we conſider how much injuſtice, depravation of manners, avarice, ambition, and luxury prevail among men: it will be manifeſt, that without civil power, men cannot be preſerved in ſafety, not to ſpeak of any high advantages or pleaſures to be enjoyed in ſociety: and that it is by civil power alone an effectual remedy, and ſuch a one as muſt ſtrike the ſenſes of the moſt inconſiderate, can be found for the evils to be dreaded from theſe vices of men. For tho' all the members of a large aſſembly were ſo injuſt, that upon a fit opportunity each one for his own intereſt would do injuries to others; yet each one would abhor like injuſtice done by his fellow, when he had no ſhare in the gain of it. An aſſembly therefore of ſuch men, of whom each condemned that injuſtice in his neighbour which he would indulge in himſelf, will never make injuſt decrees for their whole body. Each one will be aſhamed to own his diſhoneſty, and will live in dread of receiving injuries from others, unleſs they are all reſtrained by equal laws enforced by proper puniſhments.

Nor is there any other way of preſerving ſociety in ſafety. For although men were not generally ſo depraved, and that even humanity and conſcience reſtrained the generality from injuries, and inclined them to give aid to any who happened to be wronged: yet multitudes would omit this duty through fear and cow-

ardice, if it expoſed themſelves to danger. Nay further; a ſufficient number of honeſt brave men, if they were not directed by ſome head, and that united in their efforts, would run into the moſt different meaſures, according to their different ſentiments; and when thus disjoined would become a prey even to a ſmaller number of leſs bravery, who were united in their counſels.

'Tis therefore very probable that ſome of the wiſer and more ſagacious, obſerving theſe inconveniencies of a ſtate of anarchy, fell upon this as the only remedy, that a large number of men ſhould covenant with each other about entering into a firm ſociety, to be regulated by the counſel of the wiſer few, in all matters relating to the ſafety and advantage either of individuals or the whole body. And diſcerning the many conveniencies to enſue upon ſuch a project, have explained it to others, and perſuaded them to put it in execution.

III. They who aſcribe the firſt origin of all civil power to the violence of ambitious men, plainly preſuppoſe that already exiſting, whoſe original they are ſearching for: as no one man could have force enough, without a large number of others already ſubjected to his direction and government, to compel a multitude ſufficient to form a ſtate, to ſubmit themſelves to his power. A civil power therefore was conſtituted previouſly to that conqueſt they ſuppoſe to have produced the firſt civil power.

Should one alledge that a potent head of a family, with his numerous domeſtics, might have conquered and thus compelled his neighbours around to ſubmit to him as their prince. This may have happened no doubt. But we are not to regard names, but things themſelves. Heads of families no doubt ſometimes had a proper regal power over their domeſtics. And further, we are not inquiring into the poſſible injurious methods of uſurpation, but into the probable juſt cauſes of juſt power.

IV. THAT it muſt conduce much to the intereſt of a multitude to be governed by a council of the wiſe, no man can deny. And altho' under ſome fooliſh plans of government, power may often be intruſted to bad hands, and thence great miſchiefs ariſe, as the corruptions of the beſt things may be moſt pernicious; yet this is no diſhonour to civil government, as if it were in general of little uſe or pernicious. For God has given men ſufficient powers of reaſon to chooſe ſome of the more prudent convenient forms out of the innumerable multitudes conceivable.

A ſtate or civil ſociety is, "a ſociety of free men "united under one government for their common in-"tereſt." That the common intereſt of the whole body is the end of all civil polity, is owned by all. This all ſubjects inſiſt upon; and all governors glory in it as their dignity; except ſome vain monſters, who forgetting their mortal ſtate, arrogate to themſelves the rights of almighty God, or even powers more exten-

ſive. The very notion of civil life, or polity, is oppoſite to deſpotiſm, or the power of maſters over ſlaves. That civil power therefore alone is juſt which is naturally adapted to this end: other power tho' granted by the raſh deed of an ignorant people, has no foundation of right. There was an eſſential defect in the deed granting it, as it was founded in an error about what is owned by all to be moſt eſſential in ſuch contracts.

One can ſcarce avoid wondering how ſome * ingenious authors ſeem to pique themſelves upon aggravating and exaggerating all the burdens of civil ſubjection, as if they deſigned to deter men from entering into it; but then leaſt they ſhould do ſo, they paint a ſtate of liberty and anarchy as the moſt frightful monſter of all. Whereas 'tis plain both ſtates have both their advantages and diſadvantages. There are no doubt many dangers in a ſtate of liberty, but theſe not continual: generally they are greater and more frequent than in civil life; unleſs a people have been exceedingly incautious in the plan of power they conſtituted: as in civil life we have a much ſurer proſpect of protection from injuries by the united force of all. Nor are there any evils peculiar to a civil life under regular government; the like or worſe, men

* The author has here in view Hobbes; and Puffendorf, both in his greater and leſſer book, who has too blindly followed Hobbes, nay even tranſcribed his very words.

were alſo * expoſed to in liberty: [as it will appear by conſidering the ſeveral parts of civil power in the following chapter.]

* Thus ſubjects are bound to pay taxes, for the common intereſt, for fortifying or defending the ſtate. But each one in liberty muſt on his part be at greater charges, either for his own conveniency, for fortifying his houſe and arming his domeſtics, or for hiring aſſiſtance. Each ſubject may be obliged to hazard his life for the ſtate. But ſo each one in anarchy may more frequently for his own defence. Subjects ſubmit to a power of life and death over themſelves in criminal juriſdictions. But ſo each one in anarchy is ſubjected to a worſe power of any enraged perſon who alledges he is injured by him, and intituled to uſe force for redreſs. If by a power of life and death one means an arbitrary power in a governor, upon any caprice, without a crime alledged, to take mens lives away; no ſuch power is in any wiſe polity; nor can any human deed conſtitute it.

CHAP. V.

The INTERNAL STRUCTURE *of* STATES: *and the* SEVERAL PARTS *of* SUPREME POWER.

AS no governors are the natural parents or progenitors of their people, nor if they were, could they tranſmit to any one heir the parental power over his adult brethren: as this power is founded ſolely upon the parental affection, and the weakneſs of immature years: the parental power can never be the foundation of the civil, tho' it be a natural ſketch or emblem of it. Nor can any perſon have ſuch power over a whole people as maſters have over ſlaves; as appears from what was already ſaid. Nor has God by any revelation nominated magiſtrates, ſhewed the nature or extent of their powers, or given a plan of civil polity for mankind. Nor laſtly can mere force without ſome foundation of right conſtitute any juſt power. It muſt therefore remain that ſome *deed* or *contract* of a people muſt be the ſole natural origin of all juſt power.

In ſome extraordinary circumſtances the caſe may be otherwiſe. For ſince the good of the whole body, as all allow, is the ſole end of all civil power; if any perſon of eminent wiſdom and great power conſults this end ſufficiently, in preſcribing a legal plan, which all upon trial ſhall ſoon heartily embrace, he may per-

haps without any iniquity impoſe this plan upon a rude and unexperienced people, which upon experience they ſhall ſoon approve, though he could not obtain their previous conſent to it. But as no people can be happy while they live in perpetual doubts and fears, as to the ſecurity of their higheſt intereſts from the invaſions of men in power; we may pronounce in general that there can be no right to power except what is either founded upon, or ſpeedily obtains, the hearty conſent of the body of the people.

II. To conſtitute a ſtate or civil polity in a regular manner theſe three deeds are neceſſary; firſt a *contract* of each one with all, that they ſhall unite into one ſociety to be governed by one counſel. And next a *decree* or *ordinance* of the people, concerning the plan of government, and the nomination of the governors; and laſtly another *covenant* or *contract* between theſe governors and the people, binding the rulers to a faithful adminiſtration of their truſt, and the people to obedience. 'Tis true that in the firſt conſtitutions of power, 'tis ſcarce credible that a rude and incautious multitude, full of admiration of the ſhining virtues of ſome more eminent characters, took theſe three formal ſteps. But then in every juſt conſtitution of power, * ſomething was originally done which plainly included the whole force of theſe three tranſactions; ſince the end known and profeſſed by all

* See Mr. Carmichael's notes on Puffendorf, Lib. II. vi. 9.

ſides in this conſtitution of power was the common good of the whole body.

As to the tranſmitting of theſe civil obligations to poſterity, the following obſervations will explain it. 1. Each citizen in ſubjecting himſelf to civil power ſtipulated protection from the whole body, with all the other advantages of a civilized life, not only for himſelf but for his poſterity: and in this, tho' uncommiſſioned, did them a moſt important ſervice. They are bound therefore, † whether they conſent or not, to perform to the body of the ſtate, as far as their power goes, all that which could reaſonably be demanded from perſons adult for ſuch important benefits received. Now 'tis highly reaſonable that all ſuch ſhould on their parts contribute to the defence and ſupport of that ſtate, by which they have been ſo long protected in a civilized life, and not deſert it unſeaſonably; but tranſmit that aſſociation with its beneficent influence to poſterity.

2. As it muſt be extremely dangerous to any political body ſettled in any diſtrict, that any lands within the ſame ſhould remain exempt from the civil power of the united body, to be a receptacle to fugitives or foreign enemies; 'tis juſtly preſumed that when any body of men poſſeſſing ſuch a diſtrict of land conſtitute a civil power, each one thus ſubjects his lands to it, that no perſon can hold the ſame without alſo

† This is an obligation *quaſi ex contractu*. See Book II. xiv. 2.

ſubjecting himſelf to it, and uniting with the body politic.

3. And yet, in times of eaſe and peace, it would ſeem injuſt and diſhonourable to any ſtate to hinder its citizens from ſelling their lands, removing to any other ſtate they pleaſe, and freeing themſelves from their former political relation. For the ſeveral ſubjects by the taxes or tributes they pay annually, compenſate all the ordinary advantages they receive from the community: and it would be injuſt to hinder them to conſult better their own intereſt if they can elſewhere. Nor is there danger that any ſtate will be deſerted by many of its ſubjects, unleſs it be either miſerably conſtituted or adminiſtred; and in ſuch caſes the citizens have a better right to quit it, and cannot be compelled to remain its ſubjects.

III. A STATE conſtituted in this manner becomes as *one perſon* in law, holding *rights* different from thoſe of the ſeveral members; and under *obligations*, which bind no individual; and committing to certain perſons or councils the management of its common intereſts. Among ſeveral ſtates thus conſtituted, as they are all with reſpect to each other in natural liberty and independence, the like rights and laws obtain as among individuals in liberty. States have their perfect rights, and obligations to each other, and are bound to offices of humanity, in a like manner as individuals in natural liberty: and have like rights of ſelf-defence. This is the caſe of all ſtates which are

independent, whether greater or ſmaller, whatever names and titles they bear, more humble or more oſtentatious. By an eaſy ſubſtitution therefore of ſtates for individuals the natural law with reſpect to individuals in liberty, makes all that *public law* of ſtates with reſpect to each other, which is of neceſſary obligation. As to voluntary or poſitive *public law*, we ſhall touch at it hereafter *.

IV. The ſeveral powers requiſite for governing a people are divided into the *greater* and *leſſer*. Of theſe greater powers ſome are executed within the bounds of the ſtate, and others reſpecting other ſtates are to be exerted abroad. Of the former claſs, is that of *making laws* to regulate the behaviour of the ſubjects, and maintain their rights, ſtill regarding the law of nature.

2. Another is, that of *exacting all ſuch tributes* or revenues as the adminiſtration of the ſtate requires: this ſome make a branch of the former. Revenues are ſometimes raiſed from ſubjects, ſometimes from conquered provinces; ſome deſtined for ſupport of the families of the ſupreme governors, and ſome for the public uſes of the ſtate. As to the former, elective princes are deemed only as life-renters, and hereditary princes have a right like that in fiefs, to be tranſmitted unburdened to their heirs. As to the other branch, princes can only be deemed adminiſtrators or truſtees for the whole ſtate.

* Ch. ix. and x. of this book.

3. A third branch of power, is the *executive*, containing all jurisdiction civil and criminal; and the right of constituting magistrates, and judges to take care of all public affairs, and decide controversies, as also officers to collect the tributes.

The powers to be exerted abroad are first those of *war*, in enlisting soldiers, and appointing officers, and directing all military operations.

2. The power of making *treaties*, either for settling peace, or maintaining commerce, and of constituting ambassadors for this purpose.

There's beside all these a certain *extraordinary right* in the supreme governor of any people, in great exigencies, to encroach upon those rights of the subjects which for ordinary are to be religiously maintained to them: as when it happens to be absolutely necessary, in some perilous emergencies, either to compell them to some extraordinary dangerous services, or to contributions of their goods beyond the ordinary proportions. This right in civil life answers to these extraordinary rights of necessity, we formerly * mentioned in natural liberty.

The smaller rights commonly vested in the supreme governor, are those of conferring civil honours, coining of money, granting to hold fairs or markets, legitimating of children, erecting corporations, admitting minors as if they were of due age, pardoning crimi-

* Book II. ch. 16. art. 3. near the end.

nals, giving protections to debtors, and ſuch like; which we briefly paſs over as of leſs importance, and not always neceſſary in every ſtate.

V. Those perſons or councils have the ſupreme power, who are entruſted with the greater branches of power above mentioned, or the greater part of them, ſo that they can exert them according to their own judgment, and no other perſon or council can reſcind their deeds. Many have ſupreme power who do not hold it unlimited, nor even for life: ſuch too as cannot alter the order of ſucceſſion, or aboliſh any of the fundamental laws of the ſtate. He is ſupreme to whom the chief parts of civil power are committed, though within certain limits, to be executed by his own order for the good of the body, ſo that he does not act by new commands, or commiſſions from any other; and whoſe deeds derive not their force from the conſent of any ſuperior.

In every ſtate the ſame quantity of power is deemed to be lodged ſome where or other; either with a monarch, a ſenate, or popular aſſembly, or at leaſt with the whole body of the people. Nor is it any diminution of the ſupremacy or independence of a ſtate that it is bound by its treaties with others, even though they be very inconvenient ones; provided the ſtate can ſtill exerciſe all the greater parts of civil power, and can govern itſelf independently of others.

If a number of ſtates enter into ſuch a ſtrict alliance, as to conſtitute ſome one perſon or permanent common

council for them all, and commit to this perſon or council ſome parts of the ſupreme power, to be executed for them all; they are called a *ſyſtem of ſtates*, or *Achaian ſtates*, from a famous inſtance of that kind. But independent ſtates then incorporate entirely into one, when the very ſame perſons or councils have committed to them all the parts of the ſupreme power to be executed for them all.

CHAP. VI.

Of the VARIOUS PLANS *of* GOVERNMENT.

THE ſimple forms of government are divided into three claſſes, according as the power is committed to one perſon, or to one council. When it is commited to one perſon, it is called monarchy; when to a council of ſome few eminent citizens, it is an ariſtocracy; and when it is committed to a popular aſſembly either of all the free citizens, or of ſome more reputable perſons deputed by them, it is democracy.

When power is committed to a council, that is deemed the will of the council which is determined by the major part; unleſs by ſome fundamental law, a certain number of members is made neceſſary for determining any matters of public adminiſtration, as a *quorum;* and what proportion of this number, can make any alterations. Precaution ſhould alſo be taken againſt an inconvenience which may always happen when a queſtion of three or more parts is put to a vote, that that part to which a great majority may be moſt averſe, may yet have more votes than any one of the other parts, and thus be enacted. This may always be prevented by reducing a complex queſtion into two or more ſimple ones, of two parts each; or by excluding by previous votes one or two of the parts of the complex queſtion, ſo as only two parts ſhall

remain for the laſt deciſive vote. A like method may be taken where many candidates ſet up for the ſame office.

II. OF each of theſe ſimple kinds there are many ſpecies. Monarchy is either *abſolute*, where the whole adminiſtration is committed to the prudence of the monarch, without any other limits than thoſe which are always underſtood from the general end of all civil government; or it is *limited* in the original conveyance of the power; and certain rights reſerved to the people and exempted from it. And then each of theſe kinds are ſubdivided into *hereditary* and *elective*; the elective princes again may either be choſen for *life*, or for a *certain term*.

There are likewiſe ſeveral kinds of *ariſtocracy*, *abſolute*, or *limited*; *hereditary* or *elective*; *perpetual* or *temporary*. † In this laſt ſort the ſenators hold their ſeats for a certain term; upon the expiration of which, others are ſubſtituted in their places. If ſuch new ſenators are elected by the people, and any free citizen may ſtand candidate, the council is rather *democratical*: but if the places are filled by the votes of the remaining members of the council; or only ſome emi-

† The characters of ariſtocracy, are *cooptation* by the ſenate, to a perpetual ſeat, and a limitation to certain eminent families, diſtinguiſhed by fortune, or bearing great offices. The characters of democracy are *popular elections*, *temporary ſeats*, and *acceſs to all* citizens to ſtand candidates. There's in many conſtitutions a mixture of theſe different characters.

nent families can be candidates, it is *ariſtocratical*. When the ſeat in the ſenate depends upon a certain quantity of wealth; or is held in virtue of certain lands juſtly poſſeſſed; 'tis called properly *oligarchical*. When theſe alone can be elected who have diſcharged certain great offices with approbation, this is deemed *ariſtocracy* in the propereſt ſenſe, and the plan of it moſt commended by ſome great authors of antiquity.

There are alſo different kinds of *democracies*, as the popular aſſembly is differently conſtituted. We have examples of two ways in the *comitia curiata*, and *centuriata* of the Romans. In the former all citizens voted equally: in the latter according to their fortunes. In ſome ſtates the lot determined the members of the aſſembly: in others the people being divided into a number of tribes, counties, or diſtricts, and theſe again ſubdivided; each diviſion ſends ſo many delegates or deputies, choſen by themſelves, to be members of the popular aſſembly.

The complex forms are innumerable, according as any of the different ſorts of ſenates jointly ſhare the ſupreme power, with any of the ſorts of monarchy; and again as any of thoſe complex kinds are again conjoined with one or other of the popular aſſemblies: and then as ſuch or ſuch parts of the ſupreme power are veſted in one or other of theſe councils, or in the monarch; or in all three jointly.

III. THAT we may diſcern which of theſe forms is preferable, the following obſervations ſeem proper.

1. In conſtituting of a ſtate theſe four points are to be aimed at: that firſt, there be ſufficient *wiſdom* in the government to ſee what is beſt for the ſtate; and then *fidelity* to chooſe what is beſt; and next that *concord* be maintained; and laſtly a *ſecret and ſpeedy execution*. If in any plan ſufficient precaution is taken for all theſe, a people cannot deſire more from its civil polity.

2. Where the parts of the ſupreme power are placed in different ſubjects or bodies; there muſt be ſome ſuch political bonds between them, as ſhall prevent their acting in oppoſition to each other; that the prince, for inſtance, may do nothing of high importance without conſent of the ſenate or popular aſſembly; nor theſe bodies do any thing without conſent of the prince; nor one of theſe bodies without the concurrence of the other. If any ſufficient precautions of this kind be taken, the civil power is better lodged by parts in different bodies, than all committed to either a monarch, or to any one council.

3. The power whereſoever lodged will never remain ſtable unleſs it has large *property* for its foundation; without this it muſt be fluctuating, and expoſed to frequent ſeditions. Wealth carries force along with it, which will overturn rights not ſupported by wealth; or be wreſted from the owners by the civil power. An hereditary monarch needs for its ſtability large crown-lands, or hereditary provinces, belonging to the monarch's family. A ſenate will not

remain ſtable unleſs a large ſhare of the lands are the property of the ſenators: and lands muſt be diſperſed among great multitudes, and preſerved thus diſperſed by agrarian laws, to make a ſtable democracy; or ſome other cauſes muſt keep property much diffuſed. And although the diligent and active, ſhould not, without weighty cauſes, be any way reſtrained in their juſt acquiſitions: (and indeed the beſt ſorts of democracy may allow them to acquire as much as can be requiſite for any elegance or pleaſure of life that a wiſe man could deſire:) yet we are never to put in the balance with the liberty or ſafety of a people, the gratifying the vain ambition, luxury, or avarice of a few. It may therefore often be juſt to prevent by agrarian laws ſuch vaſt wealth coming into a few hands, that a cabal of them might endanger the ſtate.

4. No ſuch inſolent or oppreſſive privileges ſhould be granted to any one order in the ſtate, as would exclude all others from public offices of dignity or profit. For they will become occaſions of perpetual ſeditions *.

5. As it would be of little conſequence what were the form of polity, were it provided that none but good and wiſe men got into power; (which perhaps no precaution can inſure) the main drift of good policy is, to provide that even though bad men come into power, they ſhall either have ſmall temptations to

* Of this we have a clear inſtance in the Roman ſtate, till the plebeians got acceſs even to the conſulate.

abuſe it, or at leaſt no hopes of gain and impunity in doing ſo.

6. As to the fitteſt number for making an happy ſtate, nothing can be preciſely determined. If the number is ſmall, there won't be ſtrength enough againſt bands of the avowedly injuſt, who may attack it by ſurprize; nor will there be ſufficient wealth to execute any wiſe deſigns for the improvement of life. On the other hand when the numbers and the extent of a country is very large, no governors can take ſufficient care of all their intereſts, and prevent frauds, extortions and oppreſſions, even by the avarice of the deputy magiſtrates, as acceſs to complain muſt be more difficult. And beſides, far fewer men can be employed in the greater and more important ſtate-affairs, and thus improve in that moſt important part of wiſdom, than if out of the ſame numbers and the ſame tract of ground, ſeveral diſtinct independent ſocieties had been framed. Indeed this is ſeldom matter of choice, what numbers ſhould unite. For if once vaſt empires are formed, it becomes neceſſary to any little ſtates around them to incorporate together, as many of them as may be, for their defence againſt a potent neighbour. But as agrarian laws are often juſtifiable in a ſtate, to prevent the immoderate increaſe of wealth in the hands of a few; 'tis equally juſt, for the ſame reaſons, that ſmaller neighbouring ſtates ſhould take timely precautions, and that by violence too, if gentler methods are not like to ſucceed, that no neighbour-

ſtate ſhould acquire ſuch force as may enſlave all around; eſpecially if they ſee a prevalent diſpoſition in all the inſtitutions and manners of any neighbour-ſtate toward military affairs and conqueſt.

IV. MONARCHY has theſe peculiar advantages, that it is adapted to preſerve concord, and make a ſecret and ſpeedy execution of any deſign. But then in hereditary monarchies there's ſmall ſecurity for either the wiſdom or fidelity of the monarch. In elective monarchies there's greater probability for wiſdom; but rather leſs for fidelity: and upon the death of each monarch there's an open gate to civil wars. Under an abſolute hereditary monarchy nothing is ſecure. Under the limited hereditary, no better precaution is taken for wiſdom, but there is better precaution as to a faithful adminiſtration: ſince if the monarch violates the fundamental laws, or breaks over the bounds ſet by them to his power, he plainly declares himſelf a tyrant, and forfeits his right; which all the ſubjects muſt plainly ſee: and hence will more readily agree in dethroning him to ſet up another, or to conſtitute ſome better plan. But then in the limited monarchies there generally prevail factions, which ſometimes turn into civil wars.

In the ſimpler hereditary ariſtocracies ſcarce ſufficient precaution is taken for wiſdom, and ſcarce any for fidelity, concord, or ſecret and ſpeedy execution. In the elective are better precautions for wiſdom and fidelity, but no better for concord or execution.

In democracies we are always ſecured as to fidelity; and may have a tolerable proſpect as to wiſdom too, when mens votes are according to their fortunes; or when the aſſembly is made up of deputies elected by the people: but there's no ſecurity of concord, or of ſpeedy and ſecret execution in any pure democracy.

The moſt convenient way of voting in all large councils or aſſemblies is by the ballot: as by this means, men need not dread the reſentments of men in power; and 'tis leſs eaſy to uſe any indirect influence. And altho' in the ballot there's no reſtraint of ſhame, but a door opened for private favour, hatred, and envy; yet it ſeldom happens that theſe paſſions work in the majority of a people without ſome juſt or probable cauſe. But if ſomething of the lot be alſo intermixed, * it may often quite defeat great cabals, and their arts of corruption, and ſtop the power of malice and envy. But the lot alone muſt be quite unfit to determine any point of conſequence, or to advance any perſons to offices; for tho' no man is affronted by a diſappointment this way, nor is there any room for partial favour; yet it is plainly void of all prudence or wiſdom.

V. We have ſaid enough to ſhew that none of the ſimple forms of government are well adapted to preſerve any ſtate happy. Nor is it of any avail to plead antiquity here. If all the moſt antient ways were beſt,

* All theſe points are fully explained by Harrington.

we ſhould return to caves and beaſt ſkins, for our ſhelter and dreſs. What flatterers of princes often tell us, that monarchy was the earlieſt form, is rather diſhonourable to it; importing indeed that it at firſt pleaſed a rude and unexperienced populace, but could not continue to pleaſe upon experience and the increaſe of wiſdom. And indeed in nothing could one leſs expect that the firſt eſſays would be perfect, than in the conſtitution of civil polity; a work requiring the greateſt knowledge and prudence, to be acquired only by much thought and experience of human life. The ſeveral great inconveniencies attending each of the ſimple forms ſhew the neceſſity of having recourſe to the mixt and complex; and the ſeveral great advantages peculiar to each of the ſimple, ſhew that thoſe mixed forms are beſt where all the three kinds are artfully compounded: and this was the opinion of the wiſeſt men of antiquity *.

As a council of delegates or deputies duly elected by a general popular intereſt can never want fidelity or good intention, and ſeldom can be deficient in wiſdom, it may ſeem adviſeable that a large ſhare of the civil power ſhould be lodged in ſuch a body; ſuch as that of enacting laws and even determining definitively the moſt weighty affairs in deliberation. And this part of a conſtitution ſhould be ſecured by Agrarian laws: not ſo ſtrait however as to diſcourage induſtry,

* Plato, Ariſtotle, Zeno, Cicero.

or exclude any innocent elegance or ornament of life.

If there be alſo a *ſenate* of a few who have approved their abilities and fidelity in diſcharging the great offices of the common-wealth; it may ſafely be intruſted with the ſole right of deliberating, debating, and propoſing buſineſs to the popular aſſembly. In both councils it may be proper to contrive a rotation, by new members gradually ſucceeding to the old, ſo that neither council may have above one third of unexperienced new men, nor yet any one man continue a member perpetually. Laws limiting the times that any general, miniſter of ſtate, or magiſtrate can continue in office have alſo great advantages, to prevent any perſon's ſo rooting himſelf in power or popularity, as to be dangerous to the conſtitution; and to train up greater numbers in political wiſdom, by experience in all the important offices; ſo that the ſtate may never be obliged to have all its hopes depending upon one mortal life. Where ſuch laws are ſacredly eſtabliſhed, the ſtate will never want the benefit of the wiſdom or experience of ſuch as have ſerved out their legal time. For it will be no matter of offence that at the expiration of it they muſt lay down their offices according to law.

And laſtly, for ſudden unexpected exigencies or dangers, and for the ſecret and ſpeedy execution of what the public intereſt may require, ſome ſort of regal or dictatorial power is requiſite; but ſuch an one as has no other foundation of its force but the laws

themſelves. And to this power may be committed the command in war, and the execution of the laws. This third branch may be as an arbitrator, holding the balance between the two other parts of the conſtitution, if there ſhould ariſe any high contention between the ſenatorial order and the plebeian.

The power of promoting to all ſorts of offices may be ſome way veſted in theſe three jointly, or divided among them; ſo that offices requiring great abilities and wiſdom ſhould be filled by the nomination of the ſenate; ſuch officers as are to be employed in ſpeedy execution, to be nominated by the prince: and ſuch as are to protect the rights of the people, and adminiſter juſtice among them, to be elected by the people.

A cenſorial power too would be of the higheſt uſe, to reform, or prevent the corruption of manners; by degrading perſons of any dignity whatſoever, as ſoon as they run into a diſſolute courſe of debauchery.

CHAP. VII.

The RIGHTS *of the* SUPREME POWER: *and the* METHODS *of* ACQUIRING IT.

THE perſons veſted with the ſupreme power, have it with that extent which the conſtitution or fundamental laws have given them. The ſum of *civil power* in all ſtates is the ſame; the ſame quantity of it in every ſtate reſides ſomewhere or other, at leaſt with the body of the people. But the powers veſted in the king, or in any councils, in one ſtate, may be very different from what is veſted in like perſons or councils in others. For in ſome, certain rights of the people are expreſsly exempted from the power of any prince or political council; but in others, there's no ſuch exemptions. But as the end of all civil power is acknowledged by all to be the ſafety and happineſs of the whole body; any power not naturally conducive to this end is injuſt; which the people, who raſhly granted it under an error, may juſtly aboliſh again, when they find it neceſſary to their ſafety to do ſo. Nor can any thing be conceived more inſolent or perfidious, than that perſons intruſted with power ſolely for the good of a people, ſhould ſtrive to retain it by force, for their own grandeur, when it is found deſtructive to the people.

It were to be wiſhed that in theſe caſes, ſuch pow-

ers ſhould be aboliſhed in a peaceable manner, by mutual conſent, rather than by force. Nor is it juſtifiable in a people to have recourſe for any lighter cauſes to violence and civil wars againſt their rulers, while the public intereſts are tolerably ſecured and conſulted. But when it is evident, that the public liberty and ſafety is not tolerably ſecured, and that more miſchiefs, and theſe of a more laſting kind, are like to ariſe from the continuance of any plan of civil power than are to be feared from the violent efforts for an alteration of it, then it becomes lawful, nay honourable, to make ſuch efforts, and change the plan of government.

What is alleged about ſome peculiarly divine right, and inviolable ſanctity of governors, eſpecially monarchs, is a mere dream of court-flatterers. In one ſenſe every right is divine which is conſtituted by the law of God and nature. The rights of the people are thus divine, as well as thoſe of princes: nay ſince the latter were conſtituted for the defence and protection of the former; the former ſhould be deemed the more divine and ſacred. The rights of the governor, as they are more important than thoſe of any one private man, may be deemed more ſacred than his private rights; but can never be deemed more ſacred than the rights of the whole body. A good ſubject ought to bear patiently many injuries done only to himſelf, rather than take arms againſt a prince in the main good and uſeful to the ſtate; provided the dan-

ger only extends to himſelf. But when the common rights of the community are trampled upon; and what at firſt is attempted againſt one, is to be made a precedent againſt all the reſt, then as the governor is plainly perfidious to his truſt, he has forfeited all the power committed to him.

II. In every ſort of government the people has this right of defending themſelves againſt the abuſe of power. If the prince's power be limited, and yet he breaks over its bounds, invading ſuch rights as the people had reſerved in the very conſtitution of the power; the people's right of reſiſtance is unqueſtionable. But even in abſolute governments they have the ſame right; if their governor, ceaſing to uſe his power, as if he owned it deſtined for the good of the body, ſhould govern the whole ſtate as his own property; and neglecting the common ſafety of all, turn every thing to the gratification of his own luſt or avarice; or if he plainly declares a hatred of his people; or conducts all affairs in ſuch a wretched manner, that not even the moſt ſacred rights of the people, ſuch as are neceſſary to any tolerable life, remain ſecure to them. Nor does this doctrine of reſiſtance give to the people a civil ſuperiority over their governors: for even ſlaves adjudged to the moſt miſerable ſubjection for their crimes, may have a right to defend themſelves againſt certain injuries their maſters may attempt againſt them.

As to that queſtion, who ſhall be judge in this

diſputed point, whether the governors by their perfidy and mal-adminiſtration have forfeited their right? If 'tis alleged, the people cannot judge as they are parties: for the ſame reaſon the governors cannot judge. The only recourſe then ſhould be to impartial arbiters, either within the ſtate, or in ſome other nation, if this could be ſafe: but if not; ſurely the people have a better claim to judge in this point; ſince *they* at firſt entruſted their governors with ſuch powers, and the powers were deſigned for the management of the people's intereſts, and were conſtituted for their behoof. 'Tis true there are great dangers of miſtakes on this head: but the governors are not exempted from errors more than the people. Men have often erred both about public rights, and the private ones too of ſelf-defence: but we muſt not for that reaſon deny that they have ſuch rights.

In this moſt important matter, no doubt, perſons concerned are bound to uſe the utmoſt caution, and weigh all things on both ſides. Nor ought we to involve our fellow-citizens in civil-wars, the moſt miſerable of all wars, for any ſuch lighter injuries, or wrong conduct of our governors, as may be incident ſometimes to perſons in the main good and of upright intentions. But when there's no other way of preſerving a people, and when their governors by their perfidious frauds have plainly forfeited their right; they may juſtly be diveſted of their power, and others

put into their places, or a new plan of power eſtabliſhed.

Nor does this doctrine of the right of reſiſtance in defence of the rights of a people, naturally tend to excite ſeditions and civil wars. Nay they have been more frequently occaſioned by the contrary tenets. In all ages there has been too much patience in the body of the people, and too ſtupid a veneration for their princes or rulers; which for each one free kingdom or ſtate has produced many monſtrous herds of miſerable abject ſlaves or beaſts of burden, rather than civil polities of rational creatures, under the moſt inhuman and worthleſs maſters, trampling upon all things human and divine with the utmoſt effrontery.

III. Upon dethroning a tyrant, or upon the natural extinction of a royal family, or the death of an elective prince, there ariſes an *interregnum*. In which caſe, even although there be nothing expreſsly provided in the conſtitution, yet the political union of the people is not quite diſſolved. They all continue bound by that firſt covenant we mentioned, to conſult their common intereſt by joint counſels. They ſeem to be in a ſort of ſimple democracy, for ſome time; in which it ſhould be determined by plurality of votes of the whole, or of thoſe at leaſt who uſed to be concerned in the public affairs, what ſhall be their future form of polity, and who are to be promoted to the government. Nor is it juſt that any ſmaller part, without conſent of the reſt, ſhould break off from the political

union; unleſs the majority aree ſetting up ſome injuſt or deſtructive plan of polity.

IV. To princes, or rulers of any kind, who have evidenced integrity and fidelity in their truſt, the higheſt deference and honour is due from their ſubjects; they ſhould be ſupported and defended with the lives and fortunes of all, whether againſt rebels or foreign enemies. Nor are ſubjects freed from this obligation, by any ſuch lighter faults or miſtakes of their governors, as may be incident to men in the main upright and faithful to their truſt. But if after all the efforts of their ſubjects, ſuch princes are conquered and dethroned, either by ſome competitor or ſome foreign power, ſo that their remain no probable hopes of their recovering their juſt rights; 'tis their duty in ſuch caſes to quit their claim: nay 'tis juſtly deemed extinct: ſince all obligations between governors and ſubjects are mutual, depending upon mutual offices. And when it becomes impoſſible for one ſide to perform his part, the other is freed from his obligation. The people therefore, after their utmoſt efforts for their old rulers have proved unſucceſsful, may juſtly ſubmit to the conqueror, when they cannot otherwiſe conſult their own ſafety. It would indeed be ſtrange arrogance in any prince to expect that a whole people ſhould be bound, by a vain zeal for his dignity and intereſt, to expoſe themſelves to all the rage and fury of a conqueror, to no valuable purpoſe.

V. As natural liberty is "the right of acting as

"one inclines within the bounds of the law of na-
"ture; (nor could we hold any ſuch liberty, were
there no laws to defend it from the force of the
ſtronger:) ſo we ſay a people enjoys liberty when
"each one is allowed to act as he inclines, within
"the bounds of civil law, and not ſubjected to the
"caprice of any other." We ſhould never look upon laws as everſive of liberty; but that its ſole enemy is the capricious humourous will or command of men in power. The Romans indeed in ſpeaking of a *free people*, generally meant a democratical ſtate; where men had their turns of commanding, as well as of obeying.

VI. It was already ſhewn that civil power can ſcarce be conſtituted juſtly any other way than by the conſent of the people: and that rulers have no other ſacred rights or majeſty, than what may ariſe from this: that of a large multitude of men, each one for himſelf ſubjected part of his rights to the adminiſtration of a certain perſon or council. And thus from a part of our natural liberty transferred to the ruler, and our property in a certain degree ſubjected to his diſpoſal, ariſes the legiſlative power. In natural liberty alſo each one had a right to expoſe his life to the greateſt dangers, in any honourable ſervice in defence of his family or his neighbours, and when the common intereſt required it, he could commit himſelf to the direction of others in ſuch ſervices; and hence the right of military command. Men had alſo this

right of repelling injuries, and puniſhing by violence any one who attempted or executed any injury, and even of putting him to death if this was neceſſary for the common ſafety: and hence ariſes all *criminal juriſdiction*, even to the inflicting of capital puniſhments. Nor need we have recourſe to any extraordinary grants or commiſſions from God to explain any of theſe rights of civil ſovereigns.

VII. Nor can any one form of government be eſteemed more divine than others, on any other account than that it is better adapted to promote the proſperity of the community; which can leaſt of all be alledged of abſolute hereditary monarchies. Need we ſuggeſt here that no divine law natural or poſitive determines the order of ſucceſſion to monarchies, whether the *general hereditary*, and that either by males only, or alſo by females; or the *lineal hereditary*. In the ſucceſſion to private fortunes, tho' this be manifeſt in general, that the goods plainly acquired for the behoof of a man's family and kinſmen, ſhould deſcend to his family or kinſmen upon his deceaſe; yet there are not a few difficulties in determining the proportions. But as to civil governments, which, 'tis obvious, were never conſtituted for the behoof of a family, but for the intereſt of a whole nation; there ſeems no natural reaſons that the ſucceſſion to them ſhould depend upon the proximity of blood to the former poſſeſſor; and much leſs that the lineal ſucceſſion ſhould

be regarded. * All ſuch right of ſucceſſion muſt ariſe from human laws, or decrees of a people, and theſe ſometimes very incautious and imprudent.

VIII. As to that much celebrated *right of conqueſt*, by which the conqueror claims the civil power to himſelf and his heirs over the conquered people; it has little better foundation generally than the claim of robbers and pirates upon perſons and their goods which have fallen into their hands. ‡ For firſt, unleſs the conqueror had a juſt cauſe, he acquires no right. And then though his cauſe was juſt, yet, as we ſaid above, § his claim has certain bounds; nor has he a

* See Book II. Ch. viii. 4. The deciſions of ſome queſtions about the ſucceſſion in hereditary lineal kingdoms, turn upon very fantaſtic reaſons. Some alledge proximity as a natural reaſon; and yet an elder couſin-germain's grandchild, ſhall often be preferred to a younger couſin-germain. They ſay too that ſeniority is a natural reaſon of preference; and yet the infant-grandchild of a deceaſed elder brother takes before a ſecond brother of mature years. The preeminence of ſex too is made a great matter; and yet the infant-granddaughter by an elder uncle deceaſed, ſhall take before a younger uncle. In general, theſe potent cauſes of preference, proximity, ſeniority, and the ſex, are not regarded as they are found in the competitors themſelves; but as they were perhaps in their great grand-fathers or great grand-mothers, deceaſed an age or two before.

‡ Upon this ſubject ſee Locke on Government; whoſe reaſonings are well abridged in Mr. Carmichael's notes on Puffendorf's ſmaller book. Book II. ch. x.

§ Book II. ch. xv. 5, 8. and Book III. ch. iii. 2.

right to exact more from the vanquiſhed than what is requiſite to repell the injury attempted, to repair all damages done, or to obtain ſufficient ſecurity againſt injuries for the future. If he inſiſts on more, he has no juſtice on his ſide in ſuch demands. Now it is never neceſſary, either for reverting of injuries, or repairing of damages, that the conquered ſhould be deprived of their liberty, or independency, and be reduced into the form of a province to the conqueror. Nay 'tis generally very pernicious to the common intereſts of mankind, that ſtates ſhould thus enlarge their power, and make it formidable to all around them. All preſent danger to the victorious is averted, and full reparation of damages generally obtained, long before their enemies are entirely ſubdued and over-run by their arms. The conquerors generally ſoon take to themſelves abundant compenſation out of the moveable goods of the conquered: and every ſtate when thoroughly defeated, would always conſent to make compenſation this way, nay would pay an annual contribution for a certain term, to make up what was awanting; rather than loſe their liberty and ſovereignty, and be ſubjected to foreigners. And ſurely by theſe ways all damages could be abundantly repaired.*

As to ſecurities againſt future injuries: ſurely ſuch

* The reaſonings in this and the following articles are deſigned againſt the pleas of Grotius and Puffendorf for the rights of conqueſt, and *patrimonial kingdoms*, or *principalities*, founded on it.

ſecurities as are univerſally allowed to be ſufficient againſt a ſtate yet retaining much of its ſtrength, ſhall be more than ſufficient againſt one wholly exhauſted and almoſt ruined by war: now in all treaties, theſe are deemed ſufficient ſecurities againſt ſtates yet retaining much of their force if they deliver hoſtages, give up their fleets, or a great part of them, ſurrender frontier towns with their fortifications, or receive garriſons of their neighbours into them, or even if they diſmantle them, or demoliſh all the fortifications. Nor is there any ſtate that would not rather conſent to all theſe, rather than become a province ſubjected to another.

IX. If it be alledged that puniſhments ſhould alſo be inflicted as a further ſecurity by deterring others: yet ſurely none ſhould be puniſhed but the guilty. Now the far greater part of any conquered people were involved in no guilt by their governors having entered into even the moſt injuſt wars. * The conqueror therefore can demand no more of the body of a people than that they either give up their injurious governors, or deſiſt to defend them any further, that the victor may puniſh them as they deſerve. But as to any thing done injuſtly or inhumanly in public wars, the common intereſt of mankind would diſſuade from making it matter of proper puniſhment. Within the bounds of any regular polity, 'tis generally highly pro-

* See Book III. ch. iii. 2.

bable or certain that the power of the laws and magiſtrates will be ſuperior to that of any criminal citizens; and that therefore they may be brought to juſtice. But in public wars, the forces of the parties by their confederates and allies are ſo generally brought to a parity, that the event is very uncertain: and the juſt cauſe is often unſucceſsful. This ſhould reſtrain conquerors even in the juſteſt cauſes from any ſeverities, under the notion of puniſhment; as they will become precedents to others in very bad cauſes, which yet they may judge to be juſt. The victorious therefore ſhould beware of eſtabliſhing a precedent, which may be followed thereafter againſt themſelves or their friends.

'Tis vain to alledge any tacit convention between the parties in war, that that ſide ſhall have the civil power over both which happens to be victorious. Taking arms is rather an open declaration of the contrary, that neither ſide intends to ſubmit its rights of any ſort to the other; unleſs in thoſe caſes where there has been ſuch covenants expreſsly made; nor was it ever, in any other caſe, deemed perfidious, that the party defeated rallies its forces, makes new levies, or gets new allies to continue the war. Can any one pretend, that that ſide which has a juſt cauſe, defending or proſecuting its own rights, makes any ſuch convention? and if one ſide is known not to do it, we can never preſume it on the other ſide. The patrons of this right of conqueſt too, can alledge only that the ſu-

preme governors consented, and not the body of the people: but with what shadow of right can any governors, whose power was granted to them only in trust for protection of the people, pretend to alienate or transfer the whole people with all their rights to another, either absolutely or upon any contingency? suppose the governors made such an express convention: by this audacious perfidy they plainly forfeit their power; nor is the state bound by such a deed.

X. SINCE therefore all the authors who plead that certain civil sovereignties are *patrimonial*, so that they may be sold, divided, or any way transferred at the pleasure of the sovereign, suppose also that they are generally founded in conquest; what is said above shews that such power has no just foundation. Nay if it should happen that a state in the greatest consternation, upon an invasion from barbarians, should by their own deed submit themselves and all their rights to some potent neighbour, demanding nothing from them but protection; yet even such a deed cannot constitute a patrimonial power*. For not to mention the exception of injust force and terror; or that this covenant being plainly of the onerous kind, yet does not maintain the essential quality: the very nature of the covenant, and the matter of it, shews that no patrimonial power could be intended in it. A state by submitting itself to a humane, civilized neighbour

* The reasons here confuted are found in Grotius, L. I. iv.

which exerciſed a gentle rule over its ſubjects, cannot be deemed to have conſented alſo to any manner of oppreſſion or vexations that thereafter this neighbour may inflict on them; nor that they ſhould be made over to any barbarous prince or people at the pleaſure of thoſe they entruſted themſelves to. Nay if this ſuperior ſtate ſhould attempt any thing very oppreſſive of this nature, the ſubject-people may juſtly ſhake off the yoke: ſince it was plainly upon other terms that they ſubjected themſelves. They have a right to demand arbitration, as to the equity of any thing impoſed beyond what ſhould be deemed a juſt compenſation for the protection received.

Nor can any right of ſovereignty ariſe from any ſeeming conſent of the conquered, which was only extorted by preſent force. For we ſhewed * above that ſuch force is plainly injuſt. But if the victor eſtabliſhes among the vanquiſhed ſuch an equitable plan of civil power, as ſufficiently conſults their future ſafety and proſperity, ſo that upon experience of it they are truly ſatisfied to ſubmit to it; this ſubſequent conſent becomes a juſt foundation of his power, and is a ſort of civil expiation of the injury done in the conqueſt.

XI. But further, as the right of any perſon of the royal-blood to ſucceed upon the demiſe of his predeceſſor, is not founded on any natural cauſes, but ſolely

* § 8th of this chap.

upon ſome old law or decree of the ſtate: the words of ſuch laws or deeds are to be underſtood in the ſame way as like words about other matters deemed hereditary; and thus we are to collect from them what was the intention of the people in ſuch deeds. When therefore this univerſally obtained in any country, that when the preſent poſſeſſor of any thing hereditary forfeits it, he forfeits not only for himſelf but all his kindred; we juſtly conclude that the people's intention was that the forfeitures of the hereditary ſovereignty ſhould be in the ſame manner. The plea againſt extending forfeitures to the whole kindred of the perſon forfeiting, is very ſtrong and plauſible as to private fortunes, which all know were acquired chiefly for the behoof of the proprietor and his family; and this according to a natural obligation: ſo that children and kinſmen too have a natural claim to be ſupported and have their condition advanced out of ſuch fortunes; and 'tis injuſt that the fault of one of the joint proprietors ſhould prejudice the reſt, and prevent their obtaining what they are naturally entitled to. But as to hereditary ſovereignties the caſe is quite different. They were not conſtituted for the behoof of the royal family, nor founded in conſequence of any juſt claim they had for their own behoof; but for the intereſt of the whole nation, and chiefly to prevent the miſchiefs to be apprehended in new elections of ſovereigns: and therefore they are much more juſtly

made liable to entire forfeitures from the whole family, than any private fortunes.

As therefore a people may juſtly dethrone a perfidious prince; they have a better right to exclude from the ſucceſſion any one who ſhews himſelf plainly unfit for the truſt: and ſuch are thoſe who hold tenets about divine rights which muſt excite them to trample upon the moſt ſacred rights of the people, as ſoon as they get into power; or thoſe who poſſeſſed with ſome furious ſuperſtition will ſubject their crown, or alienate no ſmall parts of the ſupreme power, to ſome foreign prince, under the ſhew of a religious character; and at the ſame time think themſelves commiſſioned by God to break through in the moſt audacious manner the fundamental laws or conſtitution, and all limits ſet by it to their power; and to force the ſubjects by the ſevereſt tortures either to believe, or falſely profeſs to believe, the moſt monſtrous abſurdities in religion, and to worſhip God in a way they judge impious. Any heir apparent who profeſſes ſuch tenets, or refuſes upon a juſt demand to renounce and abjure them in the moſt ſolemn manner, may be excluded from ſucceſſion with much better ground than if he were an ideot or a madman; as the holding of ſuch tenets muſt make him more dangerous to a free people than any folly or madneſs.

What we have ſaid relates not only to monarchs but all ſorts of governors, and to the power of a ſtate itſelf over its colonies, or provinces. If any citizens,

with permiſſion of the government, leave their country, and at their own expence find new habitations; they may juſtly conſtitute themſelves into an independent ſtate, in amity with their mother-country. If any are ſent off at the public charge as a colony, to make ſettlements ſubject to the ſtate, for augmenting its commerce and power; ſuch perſons ſhould hold all the rights of the other ſubjects, and whatever grants are made to them are to be faithfully obſerved. If the mother-country attempts any thing oppreſſive toward a colony, and the colony be able to ſubſiſt as a ſovereign ſtate by itſelf; or if the mother-country loſe its liberty, or have its plan of polity miſerably changed to the worſe: the colony is not bound to remain ſubject any longer: 'tis enough that it remain a friendly ſtate. Nor are we to imagine that any early covenants founded upon errors about the moſt eſſential points in view, can ſtill bind large ſocieties of men fit to ſubſiſt as happy independent ſtates, to continue in a ſubmiſſion everſive of all proſperity and ſafety. Nor has any thing occaſioned more miſery in human life than a vain and inſolent ambition, both in princes and popular ſtates of extending their empires, and bringing every neighbouring ſtate under ſubjection to them; without conſulting the real felicity either of their own people or of their new acquiſitions. And hence have aroſe theſe vaſt unwieldy empires; the plagues of all around them; which after ſome time are ruined by their own bulk, with vaſt deſtruction of mankind.

CHAP. VIII.

Of CIVIL LAWS *and their* EXECUTION.

THE power of making and executing laws is the moſt important internal power. Every law ſhould be intended for ſome real utility to the ſtate; and as far as human power can go, laws ſhould enjoin whatever is of conſequence to the general proſperity. But if in the very conſtitution of the civil polity, the ſovereign or chief magiſtrate is only entruſted with ſuch power as is requiſite for the preſervation of the ſecular rights of men; then they cannot exert any ſort of coercive power about the means of forming mens minds to religion or inward virtue. But when they are entruſted with certain revenues, to be employed for the public utility at their diſcretion; and where they are not expreſsly reſtricted to the care of the ſecular rights of men; ſince human happineſs chiefly depends upon virtue, the civil governors muſt think it belonging to their office, to inſtill into the minds of their ſubjects the true ſentiments of religion and virtue, and to influence their hearts to reliſh them, by the beſt inſtruction and diſcipline from their infancy, that they may be furniſhed for all the honourable offices of life.

But at the ſame time they muſt maintain to all, their ſacred right of judging for themſelves; which

would be plainly encroached upon by any penal laws about ſuch opinions, whether ſecret or divulged, which don't lead to any practices deſtructive to ſociety. Nay tho' ſuch tenets ſhould be divulged by men who imagine themſelves bound in conſcience to divulge them; it would generally be more adviſeable only to inſiſt that ſuch perſons give proper ſecurity that they will give no diſturbance to the ſtate, and bear their ſhare in all ſervices required of them for the public; and to puniſh rigorouſly only the injuries done in conſequence of ſuch dangerous opinions; rather than to inflict any penalties on men for theſe opinions themſelves. 'Tis often better to leave ſuch tenets to be exploded by the juſter reaſonings of wiſe men, than to proceed to any ſeverities on account of the tenets themſelves.

But as the far greater part of every people will not uſe this right; but induced by ſpecious appearances of ſanctity, and oſtentation of ſuperior wiſdom in ſome deſigning men, will incautiouſly give up themſelves to be led by them; it muſt plainly be the buſineſs of the magiſtrate to get this *leading* into his own hands; by appointing men of character and learning to teach the people the juſt ſentiments of religion and virtue, and to confirm them by the moſt effectual reaſonings; that they may not be perverted by the wicked arts of others. And if men in power have any tolerable wiſdom, and hold any tolerable ſcheme of religion, they will always find the far greater part of the people very tractable to follow as they lead them, ſo that little

need be apprehended from a few who may diſſent from the public ſchemes.

The exacting by law, under any penalties, that people ſhould conform in opinion and practice to any tenets or rites of worſhip, that are either falſe and abſurd, or though true yet of little conſequence, generally occaſions great miſchief to any ſtate; ſince according to the different geniuſes and tempers of men, they have and always will run into different opinions and practices in matters of religion: and thence ſome of the moſt uſeful hands will deſert the country when they are haraſſed about ſuch matters: the ſtate will be plagued with ſedition and diſcord: and the activity of men turned off from the ſervices and occupations which are moſt uſeful to the community, and occupied upon trifles. No good ſubject ſhould meet with any vexation, or be excluded from any civil right, on account of any opinions or modes of worſhip which don't hurt any of their neighbours.

II. The example of thoſe in ſupreme power will have the higheſt influence in promoting the virtue of the people: eſpecially if they advance to honours only ſuch as are of approved integrity and purity of manners. The populace in their elections, if they are truly free, always follow ſome appearance of virtue; and will ſeldom promote any but ſuch as are of diſtinguiſhed integrity. Nor will honour or power alter the tempers of the perſons advanced, if there are proper terms fixed by law for the holding of offices; ſo

that upon expiration of the term, they must return into the common condition of the people. Where the power of promoting to offices is in the monarch, the men promoted will probably resemble their political creator.

Next to *piety toward God*, the great source of happiness, and the strongest incentive to all other virtues, the virtues to be most cultivated in a state are, *temperance*, *justice*, *fortitude*, and *industry*. Such temperance as restrains not only excessive impulses toward pleasure, but all luxury and immoderate expences on the shew and grandeur of life, must be allowed, by all who consider it, to be necessary to the prosperity of any state. There is a certain measure of sensual pleasures and elegance both grateful and innocent; to provide us to this degree God and nature have produced many fruits and other materials with exquisite art. Nor is there any moral turpitude in the enjoyment of any pleasure, if it be inconsistent with no duty of life, nor tends so to soften or weaken the mind that it shall be distressed in the want of it, or be apt to neglect and counteract its duty to obtain it. Luxury therefore should be defined, "such an excessive desire "or use of the lower pleasures, as is inconsistent with "discharging the offices of life." Nor is it possible precisely to fix general measures of lawful enjoyment for all; they must be various as their fortunes, attachments, dependent friends, and even bodily constitutions are various. Now luxury in this notion of it, as

it laviſhes out mens fortunes, and yet increaſes their keen deſires, making them needy, and craving; it muſt occaſion the ſtrongeſt temptations to deſert their duty to their country, whenever it is inconſiſtent with pleaſure: it muſt lead the citizens to betray their country, either to a tyrant at home, or a foreign enemy, when they cannot otherwiſe get funds for their luxury. With the luxurious generally every thing is venal.

Nor is it juſtly alledged, that luxury is neceſſary or uſeful to encourage arts and manufactures. For arts and induſtry may be encouraged to the higheſt without any luxury, at leaſt all innocent, neceſſary, or elegant arts. Men of higher fortunes may without any luxury purchaſe the moſt ingenious and nice manufactures, as far as their ſeveral obligations in life allow it. And if any ſuch deny themſelves ſuch expences, from views of a finer liberality, in raiſing the condition of indigent friends; they along with their families, kinſmen, and friends thus ſupported, may make a much greater conſumption of the very ſame products and manufactures, or of others equally deſerving encouragement in the ſtate; and thus they with their dependents are more beneficial to artificers.

Need we mention too, that a ſober, frugal oeconomiſt, in a long and healthy copious life, generally makes greater conſumption than a prodigal of equal fortune; who is often puniſhed with a long tract of diſeaſes and penury, for the extravagance of a few years. And then, as lower orders are always imitat-

ing the manners of their ſuperiors; the plague of luxury will ſoon infect the very loweſt, and even the mechanics. Then they cannot ſubſiſt without higher prices for their labours; the manufactures muſt conſequently riſe in their prices, and cannot be vended abroad, if any more induſtrious and ſober country can afford the like in foreign markets at lower prices.

III. 'Tis ſcarce neceſſary to ſhew the neceſſity of *diligence* and induſtry, ſince the wealth and power of a nation depends almoſt wholly upon them. Agriculture is neceſſary, to prevent a conſtant drain for the food of our people, to obtain grain for exportation, and furniſh the very materials for many of our artizans, which otherwiſe we muſt buy abroad. And in like manner all mechanic arts, either ſimpler, or more elegant, ſhould be encouraged, leſt our wealth be drained by our buying foreign manufactures. Merchandize and fiſhery are of great conſequence: nay the very building of ſhips too, that we may not loſe the profit of the carriage either of our own or foreign goods, and with this, the training of ſailors; which contributes both to the increaſe of wealth and to the defence of the ſtate in war. The mechanic trades ſhould be held in reputation, ſo that people of better fortunes and families may not deem it below them to be concerned in them.

IV. That juſtice is neceſſary cannot be a queſtion. For if laws and juſtice don't prevail, as without them no right natural or acquired can be ſafe, all in-

duſtry muſt languiſh. Nay as merchants muſt augment their prices in proportion to all their caſual loſſes: where there's much injuſtice, the merchants muſt charge in the price of their goods the loſſes they ſuſtain by the frauds of the injuſt; and thus the beſt citizens muſt be loaded with this burden: nay further, any neighbouring ſtate where juſtice more prevails, if other circumſtances be equal, can underſell us, on this account. Where therefore juſtice is not maintained, the commerce of a nation muſt ſink, with all its attendant profits.

To examine into the beſt methods of *adminiſtring juſtice*, would require long diſſertations. We only briefly ſuggeſt, that a ſmall number of ſimple eaſy laws might ſufficiently protect and regulate tue citizens, if there were ſuch a contrivance for the courts of judicature, as would entruſt the deciſion of ſuits to men of great goodneſs and equity and approved integrity: ſevere reſtraints upon vexatious or oppreſſive ſuits would be of the higheſt advantage. The earlier laws and conſtitutions of the Romans about theſe matters are worthy of imitation.

V. MILITARY arts and virtues are accompliſhments highly becoming all the more honourable citizens. Warfare therefore ſhould be no man's perpetual profeſſion; but all ought to take their turns in ſuch ſervices. And however it may be obſerved, that, when according to modern cuſtom, armies are made up of the very dregs of a people, fellows too diſſolute

and worthleſs for any other occupation, whoſoever takes to this way of life for a few years is made unfit for any other occupation for the future; yet the caſe would be quite otherwiſe if all the beſt citizens ſerved in our armies by turns. This method too would bring along with it theſe grand advantages: all the people would be trained and ſkilled in military ſervice. Should one of our armies be entirely cut off, we could have another of veterans immediately: were the chief officers cut off; we would have others of equal experience in readineſs to take the command: and it would be no eaſy matter for either any ambitious citizen at home, or any foreign invader, to trample upon the rights of an armed people well trained in military ſervice.

VI. THE laws and whole conſtitution of the ſtate ſhould be ſuch as may prevent any ſmaller bodies of citizens to be more ſtrongly attached to each other, or to any foreign intereſt, whether of prince or biſhop, than they are to their own country, or have greater dependance and expectations of promotion by them. And the citizens ſhould be taught that no antient engagements, obtained from their anceſtors by the moſt impious frauds, can be of any validity againſt the proſperity of their country. For it cannot be of uſe to religion that eccleſiaſtics ſhould have great ſecular power of any kind; and much leſs that all eccleſiaſtics through the world ſhould be deemed as a great corporation to be governed by a common

prince or council; who too ſhould have power to promote, in many nations, what favourites they pleaſed, to high dignities and princely revenues; and to whom there ſhould lie appeals from the higheſt courts of the ſeveral nations, in matters upon which wealth and power depend.

VII. It is one great deſign of civil laws to ſtrengthen by political ſanctions the ſeveral laws of nature; and to point ſuch forms of buſineſs, and of proceſs in courts, as may prevent frauds and promote juſtice. The populace often needs alſo to be taught, and engaged by laws, into the beſt methods of managing their own affairs, and exerciſing their mechanic arts: and in general, civil laws ſhould more preciſely determine many points in which the law of nature leaves much latitude.

From the very beſt body of civil laws certain external rights muſt ariſe, which tho' no man can inſiſt upon with a good conſcience, yet if the perſons to whom they are granted claim them, they muſt hold them with impunity: nor can any one rightly have recourſe to violence againſt ſuch rights, or obtain redreſs at law. Many alſo of the moſt ſacred duties can be no matters of compulſion, but muſt be left to the honour and conſcience of thoſe concerned. There are certain benefits granted by law, which no good man would claim, but when claimed they cannot be refuſed *. Any ſuch covenants or teſtaments too as for

* On theſe two heads there are two good orations of Bar-

want of the legal formalities are not confirmed by human laws, a good man would often think himself bound to hold as valid, if there's nothing appointed in them beyond the moral power of the parties or testator, nor contrary to equity. But if they are wrong in either of these respects, a good man may take the benefit of the law.

VIII. THE *sanctions* of laws are *rewards* and *punishments*. There's this common reward annexed to obedience to civil laws, that these who obey them continue to enjoy all the advantages of civil life. Some few civil laws have peculiar rewards, such as honours, and premiums in money. The natural honour is "the good opinion others entertain of our "moral excellencies." Civil honours are "these ex-"ternal indications of deference which are appointed "by law."

The *simple estimation*, or character of common honesty, is so much every man's right, that no governors can deprive one of it at pleasure, without a cause determined in judgment. The higher estimation, or *intensive*, as some call it, is not a matter of perfect right; as no man can at the command of others form high opinions of any person, without he is persuaded of his merit. But as to external marks of deference, and precedency, the civil powers have a right to determine about them, as they do about other civil

beyraque, annexed to his translation of the smaller book of Puffendorf, *De legum permissione et beneficiis*.

rights. If theſe are conferred only upon real merit, they will be of high account with wiſe men. But if they are often conferred injudiciouſly, they will grow mean and deſpicable to wiſe men, and matter of ſcorn and jeſt: as they are often ſeen where they are hereditary, and there's no cenſorial power to degrade the unworthy.

IX. The true end of all puniſhment is this, that all bad men by the terror of them may be reſtrained from doing any thing injurious, and thus the community be preſerved in ſafety. *Chaſtiſement* as diſtinguiſhed from puniſhment, has in view only the reformation of the ſufferer: and *reparation of damage*, aims at the utility of the one who ſuſtained the loſs: to this men are often bound even without any preceeding crime or fault.

Neither anger, nor hatred of the criminal, nor even that honeſt indignation at moral evil, which is natural to every good man, ſhould be the ſole ſprings of puniſhing: but rather a calm regard to the common intereſt, and the ſafety of the innocent. The true meaſure of puniſhment is not to be taken from the degrees of moral turpitude, but the exigence of ſociety. A great deal of high moral turpitude muſt paſs unpuniſhed: and yet on the other hand if the ſafety of the community require it, ſome actions which ſhew ſmaller depravity of temper, muſt be puniſhed ſeverely. Thus no penalties are inflicted on ingratitude, and want of humanity; while any inſurrection

againſt the ſupreme power, though upon plauſible pretences of the right of ſome competitor, muſt be puniſhed ſeverely. But the crimes which deſerve the higheſt puniſhments on both accounts, are the public ones of men in power, perverting what was intruſted to them for the ſafety of others, to the oppreſſion of the citizens.

Though it may not be neceſſary to puniſh the firſt motions or haſty intentions of wickedneſs, nor is it often practicable; as ſuch raſh motions may upon ſudden provocation ariſe in the breaſts of good men, who will ſoon reſtrain them of themſelves: yet ſuch as have proceeded to any external actions which might have effectually accompliſhed the evil, but were prevented by accident, or force, or the timely aid of others, and which ſhew furious malice and obſtinate purpoſes of injury, theſe deſerve as high puniſhments as if they had obtained their effect. Sometimes indeed the public intereſt may require the granting even rewards to ſome bad actions, and pardoning the greateſt criminals.

The *reſpect of perſons* which is highly culpable in judgment, is when any regard is had to ſuch qualities of actions or circumſtances of the guilty as neither affect the turpitude of the crime, nor the ſenſe of the puniſhment, nor the common intereſt of ſociety. But circumſtances which affect any of theſe three muſt always be regarded. And therefore when other circumſtances are equal, pecuniary fines are to be en-

larged for equal crimes according to the fortunes of the criminals, and corporal puniſhments according to their ſtrength of body; and ignominious ones are to be abated according to the dignity of the perſons.

But we muſt not go on in increaſing without bounds the ſeverities of puniſhment upon the higher crimes. For frequent ſpectacles of tortures have a tendency to diminiſh our natural compaſſion and tenderneſs of heart, and to make the tempers of men more ſavage and cruel.

X. 'Tis injuſt to puniſh any man for the crimes of others; nor is it equitable to confiſcate the whole fortune of a family for any crime of the head of it. All the natural claims of the wife and children to a ſupport out of it, as well as debts due to any innocent perſons, ſhould firſt be diſcharged. Nor is it naturally juſt to puniſh any bodies corporate for any crimes; the guilty only in ſuch caſes ſhould be puniſhed, whether private perſons or magiſtrates of the corporation. It may ſometimes be juſt to take from the corporation either theſe privileges, or fortifications, or arms, by which the criminal members of it were encouraged or enabled to do injuries to their neighbours, if ſecurity againſt like injuries can be obtained no other way. The corporation may ſometimes be bound to compenſate damages out of its public ſtock, or even the private fortunes of its members, when the criminals cannot be found, or cannot repair the damage; if it has been occaſioned or encouraged by any of theſe

advantages, privileges or fortifications, which the body had obtained for their own behoof.

XI. EVERY government has the juſteſt right to exact tributes from the ſubjects by law, provided they are no more than what are requiſite for the prudent adminiſtration of public affairs; as this public expence is made for the behoof of all. The violating ſuch laws by any ſubject is equally criminal with theft. Nor is the injury ſo properly done to the governors, as to our fellow-ſubjects, who muſt be obliged to make up deficiencies occaſioned by theſe frauds, ſome other way, and muſt be ſubjected to other burdens on this account; beſide many other inconveniencies. There is no other poſſible method, of making men contribute in juſt proportions to the public charge, than by inſtituting a *cenſus*, or valuation of all their fortunes.

XII. THESE are the obligations of ſubjects toward their governors: firſt, they are ſacredly bound to obey all their juſt laws and commands; and ſecondly, if the thing commanded be a matter committed to the power of the governor; 'tis generally the duty of ſubjects to obey, even when they judge that the orders are imprudent. This holds moſt obviouſly in military operations. For to allow the inferior to judge of his orders, and only to obey when he thinks them prudent for the good of the ſtate, would deſtroy all military diſcipline, and reduce an army into a tumultuous mob.

3. Hence it follows that in matters committed to

the wiſdom of governors, the ſubjects may act a juſt nay an honourable part in obeying ſuch orders as were very criminal to their governor: the ſubject by obeying is preventing the greateſt miſchief; ſince from the relaxing of all order and government, far greater evils muſt generally enſue, than from the execution of very imprudent orders.

4. But if the thing commanded ſeems to the ſubject ſo entirely pernicious and ruining to the ſtate, that it were better to break through and deſtroy the authority of ſuch commanders, than to execute ſuch deſtructive orders: the ſubject may refuſe obedience. But in ſuch matters they ſhould uſe the utmoſt caution that they don't judge amiſs.

4. Where we are commanded to do any act directly irreverent and impious toward God, or contrary to the perfect rights of others; or where the matter commanded was not committed to the power of the commander; we are under no obligation to obedience. Nay 'tis often highly honourable to endure rather any puniſhment, than ſubmit to a precedent that may be ruinous to our country. We ſhewed above * in what caſes it is lawful for ſubjects to reſiſt their governors.

The common duties of all ſubjects muſt eaſily appear from the nature and origin of civil power and the political union. Their peculiar duties ariſe from their ſeveral ſtations, relations, and offices in the ſtate.

* Book III. vii 2.

CHAP. IX.

The LAWS *of* WAR.

THE rights of war and treaties are of that claſs which reſpect foreigners. The principal matters of right in war, as to their cauſes and bounds, were explained in the former book *, when treating of war among perſons in natural liberty. The ſame maxims hold in the public wars of ſtates, which with reſpect to each other are in the ſame ſtate of natural liberty.

As to public wars of a leſs ſolemn kind, without the order of ſovereign ſtates on both ſides; they may be ſufficiently underſtood from what was already ſaid about the right of governors to repreſs tumults and inſurrections, and from the right of reſiſtance that ſubjects may have in defence of themſelves againſt perfidious governors †. "A war undertaken by or-"der of independent ſtates on both ſides" is called a *ſolemn war*. Nor need we add to the definition, that it be *previouſly proclaimed;* though it be highly becoming every civilized nation, when they have recourſe to force, to let all around know the grounds of it, as ſoon as they can conveniently. But 'tis plainly not incumbent on the nation invaded by another,

* Ch. xv. † Book III. vii. 2.

to make a previous declaration before it defends itſelf. Nor is it always neceſſary that the aggreſſor ſhould make ſuch previous declaration; as perhaps his ſureſt method of obtaining his right may be by ſurprizing the enemy; and a previous declaration might prevent his beſt opportunity of ſucceſs. What has led ingenious and learned men to make a previous proclamation neceſſary, was too great a deference to the *feecial laws* among the Romans. But as contending by violence is not agreeable to the rational and ſocial nature, 'tis unworthy of a good man, when he is forced to betake himſelf to it, not to declare openly, as ſoon as he can with ſafety, his motives and intentions, that all may ſee that he could not otherwiſe obtain his right.

As in civil wars there are often ſpecious reaſons on both ſides; all neighbouring ſtates ſhould ſhew the ſame favour to both the contending parties as to theſe engaged in ſolemn wars. Nay in civil wars there are as frequently as in the ſolemn, juſt cauſes on one ſide, and ſpecious ones on the other. Nor is either of the parties engaged in them to be deemed like robbers or pirates, abdicating or forfeiting all the rights of mankind.

II. The laws of war either reſpect the contending parties or neutral ſtates. "What right reaſon "ſhews neceſſary to be obſerved in war for the ge- "neral intereſt of munkind" may be called *the law of nations of neceſſary obligation*. But "what a long

" tract of time has made cuſtomary; with a tacit ap-
" probation or conſent of nations;" which however might be altered by contrary cuſtom, or taken away at once by a timeous premonition of all concerned, we may call the *voluntary law of nations*.

The juſt cauſes of war were explained in the former book *. But with reſpect to the neighbouring ſtates we may ſuggeſt, that as among citizens there are allowed actions at law for prevention of damages not yet done, and agrarian laws reſtrain ſuch exceſſive acquiſitions of wealth as may prove dangerous to the ſociety, though the acquiſitions are not to be made by injurious means; ſo ſometimes among neighbouring ſtates, a dangerous increaſe of power in any one of them may give a juſt cauſe of war, if no gentler ſecurities can be obtained: eſpecially when the people of that ſtate ſhew a general ambition of military glory and conqueſt, and quit all peaceful arts: ſo that their neighbours muſt be in perpetual dangers, unleſs they alſo quit the innocent arts of peace, and are always a training to war. But this is an inſtance of theſe *extraordinary rights* which ſeldom occur.

In public wars the term of commencement, and the term of ending, or the bounds of our demands, may be fixed the ſame way as thoſe of private perſons in natural liberty; of which formerly.

The juſt methods of carrying on war are open violence, or ſuch arts of deceiving as carry along with

Ch. xv.

them no profeſſion or tacit engagement of communicating our ſentiments to the enemy *. Violence is juſtifiable only againſt men in battle, or ſuch as violently obſtruct our obtaining our rights; altho' by the inhuman cuſtoms which have prevailed, men may exerciſe with impunity any ſort of cruelties toward their enemies. 'Tis alſo very ordinary to deceive enemies by any falſe narrations, or any ſort of diſcourſe, except ſuch as imports making ſome covenant or treaty with them. But as it is by treaties alone that either peace can be reſtored, or more humane methods of war maintained, and horrid mutual cruelties prevented; it never was, nor ought to be allowed to deceive enemies by any form of treaties.

III. THERE are many other obligations introduced by long cuſtom importing tacit covenants; which however could be taken away by a timeous premonition of all concerned. Such as, that none ſhould uſe poiſons in war, or employ any of the enemies ſubjects or ſoldiers to aſſaſſinate their prince or their generals. That all meſſengers or envoys, or ambaſſadors ſent on either ſide ſhould have protection to their perſons, is indeed matter of neceſſary obligation; ſince it is by their means alone that peace can be obtained, without the entire deſtruction of one ſide, or any humane methods of war preſerved. But 'tis matter only of voluntary right that paſſports ſhould be mutually allowed, to any ſubjects of the hoſtile nation who come un-

armed, to travel through their countries, or to reſide in their cities.

IV. Upon what grounds of juſtice the goods of the ſubjects of hoſtile ſtates are ſeized mutually, comes next to be explained.

1. All ſtates in amity are bound to reſtrain their ſubjects from depredations, or any way injuring the ſubjects of ſtates around them: and when ſuch injuries are done, they are obliged to compel the authors of them to make reparation. We now ſpeak of ſubjects who are amenable by law, and not of pirates or robbers.

2. When ſuch reparation is demanded and refuſed, the injured ſtate may juſtly have recourſe to force, ſeizing the goods wrongfully taken, or if they cannot find them, taking to their value from the authors of the injury, or from the ſtate, which by defending the depredators bring the guilt upon themſelves. And this right is ſtill more obvious if the injuries have been done by public order.

3. If there's no opportunity of ſeizing the public goods of the injurious ſtate, the injured may ſeize the private goods of any citizens of that ſtate. For as the political conſtitution and the civil power was erected for the behoof of all the ſubjects, they are bound to repair any damages ariſing from this contrivance which they fell upon for their own utility *. And the civil

* Book II. xiv. 2. and Book III. iii. 2. art. 5.

powers by giving their protection, have plainly ſupported and excited their ſubjects to ſuch injuries.

4. But then theſe innocent ſubjects who ſuffer thus by theſe repriſals, on account of their community, may juſtly claim from their community to have their loſſes repaired, out of the common ſtock, or out of the goods of the depredators. It certainly would be the more equitable and clear way, that goods thus ſeized as repriſals from the innocent ſubjects were only detained as pledges, till the injured ſtate received reparation another way, and then were reſtored to the owners. But a contrary cuſtom has prevailed †; and the old property is on all ſides deemed to be exſtinguiſhed, as ſoon as ſuch goods taken are brought into any fortreſſes of the captors, and adjudged, either to them or their community: ſo that ſhould they even be retaken afterwards, the old proprietors cannot claim them. Nor can they be taken by violence, or any claim be made upon them by the old proprietors, after they are any way legally acquired by any ſubjects of a neutral ſtate, and brought within their territories.

V. The principal laws with reſpect to neutral ſtates are briefly theſe. 1. A neighbour-ſtate under no engagement to ſend auxiliaries to either ſide, ought neither to be involved in the war, nor ſuſtain any damage by it.

† Probably with a view to make the ſoldiers more active in diſtreſſing the enemy: as large ſhares of the goods taken are uſually given to the captors.

2. If the neutral ſtate by ſome former treaties be obliged to ſend auxiliaries to both upon the event of wars; when its two confederates are at war with each other, it ought to ſend aids to neither; or if it is inclined to engage in war, it ſhould ſend aids to that ſtate whoſe cauſe it judges to be juſt. For all ſuch offenſive and defenſive alliances bind only upon ſuppoſal that the cauſe be juſt: nor can they bind the neutral ſtate to make war upon ſuch as are allied to them by ſolemn treaties.

3. A neutral ſtate may juſtly purchaſe, or take by any other title, any moveable ſpoils taken on either ſide after they are adjudged as lawful prize: nor can the former proprietors have any further claim upon them. The neutral ſtates or their citizens are no competent judges of the juſtice of the war and the captures; and they may frequently be ignorant whe-the goods they purchaſe are prizes taken in war or not.

4. But as to lands, forts, or cities the caſe is different. The neutral ſtate muſt know by what title they are held, and that they were taken from a ſtate in amity with them: and by purchaſing them they muſt preclude that ſtate from retaking them again. What annual rents or ſervices may be due by any diſtrict or ſmaller town, to any great city or fort lately taken by the enemy, may juſtly be paid by ſuch as are neutral, to the preſent poſſeſſor; and the refuſal of ſuch payment might be deemed a declaration againſt the juſ-

tice of the capture. If ſuch great cities or forts be again recovered by the old governors, the payments made to the enemy during his poſſeſſion muſt be ſuſtained as good; nor can the repayment of the ſame ſums or ſervices be demanded. But if the violent poſſeſſor pretends to ſell or alienate or relinquiſh for ever any ſuch rents or ſervices due by a neutral territory, or to exact payments of old debts, or to aboliſh them, the deed will not be valid againſt the old proprietor when he recovers his old poſſeſſions again.

5. Whatever new favour is granted, by a neutral ſtate to one of the parties in war, it muſt grant the like to the other, if it would preſerve neutrality; ſuch as the allowing any of its ſubjects to enliſt, or hiring out its troops, or ſupplying with military ſtores. Indeed the ſending arms or military ſtores, by way of merchandize, to either of the ſtates of war, is deemed commonly by the other a breach of the neutrality; and they are accordingly ſeizable: and ſo are even common proviſions into any place beſieged.

6. Neutral ſtates muſt not be hindered in their commerce with either of the parties, except in arms or military ſtores; the nature of which too 'tis not eaſy to define. A neutral ſtate may ſet to freight its merchant-ſhips to either ſide for trade. If they are taken, the enemy's cargo is juſtly ſeizeable, but not the ſhip. Neutral ſtates may freight the ſhips of either ſide; and if they are taken, the cargo cannot be made a prize, but the ſhip may. Nor ſhould any neutral

ſtate loſe any right of pledge or mortgage formerly conſtituted, in any goods moveable or immoveable which happen to be taken in war.

7. Neither of the parties at war ought to uſe any violence againſt each other within the territories of a neutral ſtate, by taking men, ſhips, or other goods of their enemies, found in neutral ports. And the territory of each includes not only their harbours, but any narrow bays running far into the land, the ſhores, and ſuch contiguous parts of the ſea as are within reach of any military engines. For if ſuch violence were allowed, a neutral ſtate might ſuffer greatly by being made a ſeat of war; and their commerce with both ſides muſt be entirely obſtructed.

8. As to deſerters and fugitives; neither of the contending parties can exerciſe any juriſdiction conjoined with force, over their own citizens within the bounds of a neutral ſtate, except by commiſſion firſt obtained from the civil powers of the neutral ſtate. No ſtate indeed ſhould protect ſuch as have been guilty of the more atrocious, deteſtable crimes; ſuch criminals ſhould be ſeized and delivered up to juſtice. But as to deſerters in war from either ſide, or perſons who have fled on account of religion, or any ſtate crimes they committed, in conjunction with any ſtate-faction, upon ſome plauſible ſhews of right; a humane cuſtom has obtained that they ſhould find protection in all other ſtates, while they don't make any new attempts againſt the civil powers of their country.

CHAP. X.

Of TREATIES *and* AMBASSADORS, *and the entire* DISSOLUTION *of* STATES.

THE chief laws of nature about treaties were explained in the doctrine of contracts in natural liberty *. But we muſt remember that the exception of injuſt force and fear cannot be admitted againſt the obligation of any treaties of peace; otherwiſe the old controverſies might always be kept a-foot. And yet ſuch exceptions may juſtly take place when the war is manifeſtly and avowedly injuſt on one ſide; or if the terms impoſed by the more potent ſide are manifeſtly injurious and contrary to all humanity. In theſe caſes the party injured may inſiſt upon an arbitration; and if the other ſide refuſe to ſubmit to it, each ſide muſt by force conſult its own ſafety and the maintenance of its rights, by what aids it can find.

Treaties are divided into *real*, and *perſonal*: the perſonal, which are leſs in uſe, are entered into in favour of the prince's perſon, and ceaſe to bind upon his demiſe. The *real*, reſpect the body of the people, or the nation, which is deemed immortal. Treaties are alſo divided into the *equal*, ſuch as bring equal or proportionable burdens on each ſide, and *unequal* which bring unequal burdens. But 'tis not every un-

* Book II. ix.

equal treaty that any way impairs or diminiſhes the † majeſty and independency of the ſide ſubmitting to the greater burden.

Hoſtages in former ages were ſecurities commonly given for performance of treaties, but they are now gone into diſuſe; becauſe it would be exceedingly inhumane to treat the innocent hoſtages any way harſhly becauſe of the perfidy of their country.

II. In making treaties *ambaſſadors* are employed. Their rights are all the ſame, whatever names are given them, if they are entruſted to tranſact the affairs of a ſovereign ſtate. Their perſons ſhould be ſacred and inviolable, as we ſaid above. They have a juſt natural right to demand that their propoſals ſhould be delivered. But as to an allowance to reſide any time in the ſtate to which they are ſent, they may claim it as due out of humanity, but cannot inſiſt on it as a perfect right. Since the buſineſs of the more active ambaſſadors is much the ſame with that of ſpies upon the nations where they reſide. If they are allowed to reſide; the law of nature would give them no higher rights or immunities, than any other foreigner might claim without any public character.

But by the voluntary laws of nations, they have many ſingular privileges and immunities, both for themſelves and all their neceſſary retinue: all which however any ſtate might without any iniquity refuſe

† Book III. v. 5.

to grant them, if they give timeous intimation of their design to do so to all concerned.

1. This is customary in the first place, that no action can be brought against an ambassador or his necessary retinue, such as his secretaries, or domestics, in any courts to which he was not subject previously to his taking this character. What has been in view in this custom, was this; that an ambassador, the more vigilant he is in his office, will be generally so much the more disliked and hated in the state where he resides: and therefore were he subject to its courts, he would not have a fair hazard for justice in a nation prejudiced against him. The subjects of the state where he resides may easily abstain from any contracts with him in which they may be wronged, since they can have no action against him. Should an ambassador or his retinue commit any outragious crimes; he may be sent home, and justice demanded of his constituents; the refusal of which may be a just cause of war. If any ambassador intermeddles in trade, his merchant-goods, except such as are necessary for his support in his embassy, are liable to attachments or arrests for the debts he contracts in trade.

2. An ambassador's house is deemed a sanctuary to himself and all his retinue and attendants: of which however a list may justly be demanded upon his admission; and the state where he is to reside to have a right to fix what retinue of his they will receive or grant immunities to. But an ambassador by this pri-

vilege muſt not impair the juriſdiction of the ſtate where he reſides over its own ſubjects, by making his houſe a ſanctuary for any criminals among them.

3. An ambaſſador has the ordinary power of the head of a family over his own domeſtics; or ſuch juriſdiction in their civil actions as his conſtituents have granted him. But neither an ambaſſador, nor even a prince reſiding in a foreign ſtate, has a criminal juriſdiction or power of inflicting capital puniſhments upon his own ſubjects, except by permiſſion of the ſtate where he reſides.

4. *Inhibitions* may juſtly be uſed againſt an ambaſſador, to reſtrain him from any outrages againſt our ſubjects: and they themſelves have the natural right of repelling force by force.

5. No ſtate is bound to admit any exiled criminal or fugitive ſubject of theirs, as an ambaſſador from any neighbouring ſtate. But if ſuch a one is ſent with ſuch commiſſion, he cannot juſtly be ſeized or puniſhed, but he may be immediately ordered to quit our country.

6. The honours and precedencies of ambaſſadors muſt be determined by expreſs conventions or the tacit ones of long cuſtom. The ſole natural cauſes of precedency would be the ſuperior excellency of the conſtitution of the ſtate he repreſents; or his own ſuperior perſonal worth. The abſolute or hereditary power of his conſtituent is the worſt reaſon of all; if we regard true merit, and not cuſtoms introduced by barbarians.

III. As to the diſſolution of our political relations, we may obſerve: that by perpetual baniſhment, one ceaſes to be a ſubject any further. But it is not ſo in temporary baniſhments; much leſs in perpetual confinements to any remote parts of the ſtate.

2. No man can claim it as his perfect right to quit his country without the permiſſion of the civil powers or the laws, while it remains unaltered.

3. Where the old conſtitution is much altered, either by foreign force or any potent faction; ſubjects who diſſent from theſe changes have a right to conſult their own ſafety elſewhere. And provinces may reſume their independency if they can: as they were ſubjected, as we ſaid above *, only by their own conſent, and that to a ſtate conſtituted in a very different manner.

4. But upon any improvements made in a conſtitution, ſubjects can have no juſt right to deſert it.

5. Whatever changes be made by the citizens themſelves in their own conſtitution, their treaties with foreigners ſtill remain obligatory on both ſides.

IV. We may from what was ſaid above ſee, what right any ſtate can have to give up any part of its diſtrict, or any province with the people dwelling in it, to an enemy, or any foreign potentate. For firſt, as the ſeveral parts of any community, and even provin-

* Book III. vii. 8, 9, 10.

ces, ſubmitted themſelves to the whole body for the common utility of the whole, in which each one was to ſhare; the community has no right to give up or alienate any parts or any provinces without their own conſent; or to oblige them to be ſubject to any other power, when they think they can otherways better conſult their own intereſt. But on the other hand, as there can be no obligation to impoſſibilities; if a ſtate cannot defend its more expoſed parts, or its provinces; it muſt leave them unprotected: nay, if the ſafety of the whole cannot otherways be maintained, it may bind itſelf by a treaty to give no further defence to theſe parts or provinces. But ſuch a treaty impoſes no obligation upon the part or province ſo deſerted, to ſubmit to this new claimant. It may juſtly conſult its own intereſt any other way; either by obtaining new confederates, or giving itſelf up to ſome other ſtate upon as good terms as it can; that it may be protected againſt the preſent invader. For that covenant about the common defence of all, by which the ſeveral parts were united into one ſtate, is now come into the caſe of contracts * about what proves impoſſible to be performed.

What is ſaid about any part of a people or a province, holds alſo as to any brave citizen, whom an enraged enemy demands to be given up to him. Such a brave man in caſes of the utmoſt extremity may be

* Book III. vii. 8, 9, 10.

as it were abandoned; or no further protected. But his country has not a right to seize and deliver him to the enemy, or to hinder him to consult his safety elsewhere.

V. As to the entire dissolution of states; these maxims hold: when a state is entirely conquered, the several subjects of it, and the provinces too, have a right to secure themselves as well as they can; whether by adjoining themselves to any other state, or by attempting to set up a new sovereign state to themselves in the province. Citizens no doubt are bound to hazard all for their country, and not to despair too hastily about its safety. But if they have made all possible efforts for their country, and yet all in vain, they may justly consult their own safety as they can.

2. If by any unexpected accidents, a state which seemed extinct and conquered for some considerable time, finds opportunity of setting up again independently, its former subjects and provinces seem bound to re-unite themselves to it; provided that during the conquest they came under no new and just engagements inconsistent with this re-union. For such engagements as the citizens or provinces of the ruined state have entered into with foreigners, without any fraud, while their former country seemed destroyed, must be as obligatory as any.

3. A state which has long continued conquered, and was made a province to the conqueror, has lost all its rights over any of its former citizens who have fled

to other countries, and over its former provinces. And tho' after a courſe of ages a new ſtate ſhould be formed in the ſame tracts of land formerly occupied by the old ſtate; this new ſtate can claim none of the peculiar rights of the old one. The ſtates occupying the ſame lands in different ages may be quite different political bodies: and the political body may remain the ſame when they change entirely their lands, nay while they have none at all in poſſeſſion.

While our country remains, all good men ſhould be united in this purpoſe, to deem nothing too hard to be endured or done for its intereſt; provided it be conſiſtent with the laws of that more ancient and ſacred aſſociation of all mankind, of which God is the parent and governor. "Our children are dear to us, our "wives are dear, ſo are our parents, our kinſmen, our "friends and acquaintance. But our country contains "within it all theſe objects of endearment, and pre-"ſerves them to us: and therefore every good man "ſhould be ready to lay down his life for it, if he can "thus do it ſervice."

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